In the Supreme Court of the United States.

UNITED STATES OF AMERICA, APPELLANT,
v.
JAMES STINSON, HENRY J. STINSON, AND Michael S. Bright, as receiver of James Stinson, appellees.

ON APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

The Government regrets to present to the court a statement and argument running to such length; but dealing with a record of 500 pages, it has been necessary to set forth the testimony in order that the court may be accurately apprised of the facts. We have condensed as thoroughly as possible, and submit with respect, that the result is really after all a terse abstract from a voluminous record and a complicated argument, and is necessary to the accurate knowledge of the court.

This is an appeal from the decree of the circuit court of appeals for the seventh circuit affirming the decree of the circuit court for the western district of Wisconsin in a suit in equity brought by the United

States to set aside patents to fourteen quarter sections of land in Douglas County, Wis., now within the limits of the city of Superior, though practically unimproved. The lands were acquired from the United States by fraud, as alleged in the bill of complaint, by means of the preemption act, as they were not open to cash entry, and at the time, 1854 and 1855, the homestead act had not been passed.

THE COMPLAINT.

The complaint avers that the defendant, James Stinson, being at the time a British subject and therefore not entitled to enter any lands under the act, hired certain immigrant Swedes, who had been in the country but a short time and were entirely ignorant of the English language and our laws and customs, to preempt the lands for his benefit and convey them to him; that there were no actual bona fide settlements upon or improvement of the lands; that the preemption certificates and patents were obtained by false proofs of settlement and improvement, and false affidavits of preemptors showing that they made the entries in good faith for their own exclusive use and not to sell the same on speculation, or under any agreement, express or implied, that the title should inure to the benefit of another; that Stinson was an accessory to these false proofs, in fact, procured them to be made; that the land was taken with money furnished by him, the parties all being hired for that purpose; that the lands were immediately conveyed to him when the ceremony was completed and before the

patents were issued; that the fraud was not discovered by the General Government until 1885, when a special agent of the General Land Office made an investigation and ascertained and reported the fraud to his superior officers; that a suit in equity was brought very soon after such report, but was before the conclusion thereof dismissed because of a technical defect in the form of the bill; that a second action thereafter begun failed of prosecution through changes in the office of the local United States attorney, and that thereby the injunction then procured restraining the defendant, James Stinson, from transferring the lands in controversy, was vacated; that said Stinson thereafter hurriedly executed a conveyance of the property to his son, Henry J. Stinson, for the recited consideration of $1,500,000, taking back a mortgage to himself for $1,460,000; that this conveyance was made without consideration and that it and the said mortgage executed contemporaneously were to hinder, delay, and defraud complainants and to impede any action for the recovery of the lands.

The relief prayed was a decree vacating the patents as well as the subsequent fraudulent conveyances.

ANSWER OF JAMES STINSON.

James Stinson, answering separately, denied the employment of the men, or either of them, to preempt and patent the lands for him; denied any fraudulent purpose or any scheme to cheat the complainant of its title; admitted, as to each of the preemptors named, that they preempted the lands in question, but not

under employment, hire, direction, or control of himself; admitted that they presented proofs, papers, and affidavits to effect the entries; admitted, on information and belief, that such papers were received as sufficient by the officers of the local land office, but denied, on information and belief, that such papers were false or fraudulent; admitted that the parties conveyed the lands in question to himself; and, in substance and effect, denied in general and detail the allegations of the bill charging any false or fraudulent action upon his part. He then averred that his father, Thomas Stinson, of Hamilton, Canada, being in his lifetime possessed of considerable means and property, placed in defendant Stinson's hands, between 1850 and 1857, considerable sums of money, to be invested in real estate in Wisconsin and Minnesota; that defendant purchased many tracts in said State as the agent of his father, taking title in his own name for convenience in making sale and conveyance; that defendant placed considerable sums of money in that way with an agent at Hudson, Wis., the location of the local land office, and purchased lands from persons who had obtained title thereto from the United States and desired to dispose of the same; that among the lands so purchased were the fourteen quarter sections described in the bill; that he took them entirely for his father and as his trustee; that he never had any personal interest in them himself until 1855, when he purchased two of the quarter sections from his father; that in 1856 he signed a paper declaring

his holding of the title to said lands to be in trust for his father; that his father died at Hamilton, Ontario, March 13, 1864, testate, leaving three sons, including himself, and two daughters; that a suit was commenced in chancery in 1870 against defendant and other persons for the construction of his father's will and to distribute the estate and partition the real estate, and that the land was partitioned and declared to be part of his father's estate; that parts of the lands in question were allotted to different ones of the heirs; that one of his brothers died testate in 1877, and his will was probated; that three of the quarter sections were allotted to himself, and that he bought and paid for others of the lands and derived title to twelve quarter sections through these heirs of his father, James Stinson, and through direct purchase from his father during his lifetime; that the lands were sold for taxes in 1877, and that he procured tax deeds for them himself; that he has already paid taxes to the amount of $75,000 on the lands, and that the taxes for several years remained unpaid, amounting to $80,000, which he intended to pay up to the time when they were conveyed by deed to his son, Henry J. Stinson, by himself; that at the time of the entry of the tracts of land in question he was much interested as one of the original proprietors of Superior, and had charge, to a certain extent, of improvements made in opening and grading streets, etc., and employed John Johnson, one of the preemptors, to hire laborers to work on the streets in making improvements, and that among them were, as he

is informed, some of the parties who preempted the lands mentioned in the bill; that he is informed they went there and labored for a considerable time, and denied that he in any way employed them to enter public lands or assert preemption claims to the same; avers, on information and belief, that they did enter upon the lands and erected residences, complied with the law generally, and subsequently entered them at Hudson, Wis., and that after such entry, and not before, he purchased said lands; that said lands were only a portion of those lands obtained by him with his father's money and as his father's trustee. He further averred that this suit is not prosecuted for the benefit of the United States, but for certain private individuals, so that they can subsequently locate the lands with scrip by reason of a conspiracy entered into at St. Paul, Minn., between parties whom he names, and avers that these parties had entered upon the lands and were trying to obtain legal title to them; he also averred that in 1881, 1882, and 1889 he made sales of some portions of the lands to different parties, and in 1894 certain railroads condemned a strip across the lands for railroad purposes and now hold possession of the same, and that his codefendant, Henry J. Stinson, has conveyed to another railroad company 22 acres and to a private party 40 acres. He further denies any conspiracy to purchase or procure land. The answer sets up lapse of time as a bar to relief by complainant. It also sets up his conveyance to his son and the terms of the same. He denies that such conveyance was made to hinder,

delay, or defraud, and avers that a bill was filed by complainant in 1887 substantially the same as the bill herein, and an injunction procured; that the same was dismissed in 1894 for the want of prosecution; that but for said injunction the lands might have been sold at high prices, as it was a time of great prosperity. That at the time of the dismissal of the former suit, owing to great financial depression throughout the country and his need for money, he sold the lands in question to afford himself financial relief, believing that the United States would rest without further prosecution of the suit, and that such were the reasons for the conveyance to his son.

THE ANSWER OF HENRY J. STINSON.

The defendant, Henry J. Stinson, by the same solicitors, filed a separate answer denying all knowledge of the matters alleged against his father in the bill of complaint, averring a sale from his father and mother to himself of the premises in question for $1,500,000, admitting that he paid no money, but that $40,000 was the consideration for his services to his father in his business, and that for the remainder of the purchase money he gave notes secured by mortgages on the land for $1,460,000, and denied any knowledge of the matters stated in the bill at the time of the purchase, or any fraud upon the part of his father in procuring the land; averred his belief in his father's denial of the fraud or conspiracy in the entry of these lands; denied that the purchase was for the

purpose of hindering, delaying, or defrauding complainant, and set up the same statement about the progress of previous suits in practically the same manner as stated in his father's answer, and averred the same sales made by himself through outside parties as those stated in his father's answer.

REPLICATION.

A general replication to these answers was filed.

THE ACTION OF THE COURT.

The circuit court of the United States for the western district of Wisconsin, in which the suit was instituted, dismissed the bill upon the ground that the allegations thereof were not sufficiently sustained by the evidence and testimony.

The case was taken on appeal to the circuit court of appeals for the seventh circuit, which court affirmed the decree of the circuit court.

An appeal to this court was allowed, and the following assignment of errors was filed:

ASSIGNMENT OF ERRORS.

> Come now the above-named complainant and appellant, the United States of America, and files the following assignment of errors upon which they will rely upon their appeal from the decree made by this honorable court on the 6th day of October, A. D. 1903, in the above-entitled cause.
>
> The United States circuit court of appeals for the seventh circuit, which entered said decree affirming the decree of the United States circuit

court for the western district of Wisconsin dismissing complainant's bill in said cause, committed manifest error in this, to wit:

1. In holding and deciding that the evidence in said cause was inconclusive and insufficient to prove that the defendant, James Stinson, did, as charged in the bill of complaint herein, with intent to cheat and defraud complainants out of their title to the lands therein described, employ, hire, or procure the persons mentioned in the bill of complaint to fraudulently or otherwise preempt, enter, or obtain patents from the United States for the lands described in said bill, or any of them.

2. In holding and deciding that the evidence offered was inconclusive and insufficient to prove that said defendant, James Stinson, did, as charged in said bill of complaint, pay all or any part of the moneys required to be paid upon the entry of said lands described in the bill, or any part thereof, and the expenses connected with the making and proving up of said entries, or that he committed or was a party or privy to any of the frauds charged in said bill in connection with the entry of said lands in question, or any of them.

3. In holding and deciding that the evidence offered was inconclusive and insufficient to prove that said lands in question, or any of them, were not preempted and entered by the preemptors named in said bill for their own use and benefit, but were so preempted and entered for the benefit of said James Stinson, or by the procurement, hiring, or employment of the said

James Stinson, or under an agreement, express or implied, to convey the same to said James Stinson.

4. In holding and deciding that the evidence on the part of the complainants, by which it was and is sought to set aside the patents in question, is not clear, unequivocal, and convincing, as required in such cases, but is doubtful, unreliable, and uncertain in character.

5. In holding and deciding that the evidence offered is inconclusive and insufficient to prove the fact to be, as charged in said bill of complaint, that the improvements alleged to have been made by the preemptors upon the lands in question, or any of them, were merely nominal, formal, and unsubstantial, and were not made in good faith, but perfunctorily and as a mere semblance of compliance with the requirements of the preemption laws.

6. In holding and deciding that the United States of America were barred of the relief sought in their said bill of complaint, by reason of laches and because the lapse of time rendered the evidence on the part of complainants uncertain, unreliable, and insufficient to establish fraud, as alleged; and because said defendant, James Stinson, had paid large sums of money in taxes upon the lands alleged to have been fraudulently entered by or for him prior to the discovery of the fraud, and because the right of third parties, to wit, creditors of the said James Stinson, have arisen or accrued in the meantime.

7. In holding and deciding that the decree of said circuit court dismissing complainants'

said bill for want of equity is right and just and in affirming the same.

8. In that the said circuit court of appeals did not enter a decree reversing the decree of the said circuit court for the western district of Wisconsin as to the fourteen quarter sections of land described in said bill of complaint, or as to some part of them, and adjudging that the same were entered and patented fraudulently and through and by means of a fraudulent scheme and false and fraudulent devices, representations, affidavits, and proofs, and without settlement upon or improvement of the same, as set forth in said bill of complaint, and further adjudging void and canceling said entries, patents, and all subsequent conveyances of said lands, in accordance with the prayer of said bill.

9. In that the said United States circuit court of appeals did not make and enter a decree reversing the decree of said circuit court for the western district of Wisconsin in respect particularly to the lands entered in the year 1854, and described in said bill of complaint, and adjudging void and canceling the entries, patents, and subsequent conveyances of each separate quarter section thereof, on the ground that the title thereto was obtained from the United States fraudulently and by means of a fraudulent scheme and the false and fraudulent devices, representations, affidavits, and proofs set out in said bill of complaint, and without residence upon or improvement of the same, as required by the preemption laws.

10. In that the said United States circuit court of appeals did not enter a decree herein reversing the decree of said United States circuit court for the western district of Wisconsin, in respect particularly to the entries made by Lorenzo Johnson, Peter Norell, Andrew Svenson, and John Johnson, second (otherwise called John Lonquist), and adjudging void and canceling the entries, patents, and subsequent conveyances of the lands entered by them, respectively, and each separate quarter section thereof, on the ground that the title to the same was obtained fraudulently and through and by means of the fraudulent scheme and false and fraudulent devices, affidavits, and proofs set out in said bill of complaint, and without residence upon or improvement of the same, as required by the preemption laws, and further, because said preemptors were, and each of them was, at and prior to the time of the alledged entry of said lands, a resident of the State of Minnesota, having families residing, and who continued to reside in said State of Minnesota from said time until long after said lands were conveyed to said James Stinson.

11. In that said United States circuit court of appeals did not enter a decree reversing the decree of said United States circuit court for the western district of Wisconsin in respect particularly to the lands entered by Aaron Peterson, Martin Larsen, Sven Magnuson, and John Johnson, second (or Lonquist), and described in said bill of complaint on the grounds already stated, and on the ground and

for the reason further that said preemptors, and each of them, after making a pretended settlement upon said lands, abandoned the same and returned to their homes in the State of Minnesota and there remained and resided for nearly a year before proving up and obtaining preemption certificates for said lands, and were so residing in said State of Minnesota at the time of so proving up and obtaining such certificates, and thereafter continued in said State, and never resided in the State of Wisconsin.

12. The said decree of the United States circuit court of appeals is contrary to law and not conformable to equity.

13. The said decree is contrary to the evidence in the case, and is against the clear weight and preponderance of the evidence.

In order that the foregoing assignment of errors may be and appear of record, the complainants present the same to the court and pray that such disposition may be made thereof as shall be in accordance with law and the statutes of the United States in such case made and provided, and complainants pray that said decree may be reversed and that a decree may be entered granting to complainants the relief prayed for in their said bill of complaint.

STATEMENT OF THE CASE.

The defendant, James Stinson, a young Canadian, in the year 1854, or shortly prior thereto, in connection with a number of capitalists, planned to lay out a townsite upon what has since become the city of Superior, Wis. He was a member of the townsite company and

was much interested in the project, and to a certain extent had personal charge of the improvements undertaken by the promoters. Believing that the place had a great future on account of its situation upon a beautiful bay and harbor at the head of Lake Superior, he desired, personally, to procure all the lands he could in addition to those procured by the townsite company. The lands in question were unsurveyed. Nothing could be done until they were surveyed, and then, under the laws and regulations in force at the time, the lands must, after having been surveyed, have been put up at public auction at the land office of the district in which they were situated and sold to the highest bidder. To obtain them Stinson might have had to pay a very high price by the usual process of competitive bidding. Such lands as might not have been sold at this public sale would then have been open to cash entry and could have been procured in any quantity at the minimum Government price of $1.25 per acre. To avoid this process of public auction or subsequent cash entry there was but one method, namely, preemption, and then no one could procure more than 160 acres, and that quantity only under certain well-defined restrictions provided by the preemption law. These restrictions were as follows:

1. The entryman or preemptor must be a citizen of the United States, or have declared his intention to become such in accordance with the naturalization laws.

2. He must make a settlement in person on the land which he proposes to purchase.

3. He must inhabit and improve the land and erect a dwelling thereon.

4. The lands sought to be preempted must not exceed 160 acres in area, to include the residence of the claimant, and the claimant must have made no previous entry or claim under the preemption laws, and must not have abandoned his residence on his own lands in the same State or Territory to reside on the public lands.

5. He must make oath, before the register or receiver of the district in which the lands are situate, among other things, that he has not settled upon and improved such land to sell it on speculation, but in good faith to appropriate it to his own exclusive use.

6. He must also make oath that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person whomsoever, by which the title he may acquire from the Government of the United States shall inure in whole or in part to the benefit of any person except himself.

7. Before being allowed to enter the land he must make proof of the settlement and improvement required by law, to the satisfaction of the register and receiver of the local land office.

8. In the case of unoffered lands, such as were those in controversy, he must within three months from the time of settlement upon the lands file a declaratory statement in the land office describing the lands settled upon, giving the date of settlement, and declaring his intention to claim the same under the preemption law,

after which he is allowed thirty months within which to complete his improvements, make proof thereof at the land office, and pay for the land.

Being an alien, Stinson could not avail himself directly of the preemption act to procure even 160 acres. It is plain from all the facts that he conceived the idea of procuring the lands by fraud through the medium of the preemption act, thus avoiding the danger of losing them by competitive bidding beyond the price he could afford to pay, and also the possibility that someone would be in advance of him on cash entry. Early in the spring of 1854 he approached George K. Stuntz, an old surveyor who lived at Superior and who did much surveying for the Government in that vicinity. He asked Stuntz if he would undertake to subdivide the township early that season, telling him that "there is a lot of us who want to get this done." He further told Stuntz that he would get survey orders if he, Stuntz, would engage to do the work. Stuntz consented to accommodate him. Stinson told Stuntz that he wanted the work done quietly, and that they were anxious to make land investments. The work soon afterwards was offered to Stuntz by somebody representing the Government, and as fast as the land was surveyed Stinson was there with men, a crowd of them, twelve or fifteen in number, who entered upon the work of putting up shanties as fast as the surveyor located corners. In this connection Stinson was very active.

Previous to this time, in Chisago County, Minn., near St. Paul, living upon a farm owned by Stinson, was a Swede named John Johnson, who had learned to talk the English language. He lived in the midst of a settlement of his countrymen, many of whom had just arrived from their native land and were wholly ignorant of the language, laws, and customs of this country. Stinson went down there, making a journey of six days through an almost trackless forest, and employed this Johnson. He admits this in his answer. Johnson immediately began to employ men to go to Superior. Ostensibly the men were employed to go for labor. But it is a significant fact that they were required, if they had not already done so, to take out their first papers—that is, to declare their intention to become citizens of the United States. It was also a requirement that they should not have preempted lands. When a party of them was collected they were each to receive $30 per month for their services. Stinson and Johnson employed these men to meet at Taylors Falls, a small town nearby, Johnson acting as interpreter. When they arrived at Superior they went to work in cutting and clearing the streets. After being employed a short time at this they were taken upon the land and there built cabin shanties. Stinson was about all the time directing their movements. After being there a short time and the first necessary steps in the fraud having been thus taken, their employment ceased, and Stinson and Johnson

conducted them back to Taylors Falls, where they parted, with the understanding that they were to meet at Willow River, as it was then called, where the United States land office for that land district was then located. They were paid money for their services. They made false and fraudulent affidavits, and the money was paid to the land officers by Stinson, and upon the final receipts being furnished the preemptors, the lands were immediately deeded to Stinson, and they then returned to Chisago County, from whence they came. They were caused to act as witnesses for each other. All swore—that is, subscribed their names and went through the pretense of swearing—to the contents of affidavits the nature of which they did not understand, and which contained recitals grossly fraudulent and false from start to finish. The next year another party went through the same process at Willow River, and thus the whole of the lands in question were procured. The nature of the proof required may be gathered from those made, and we herewith set forth examples of each from the printed record.

Here is the preemption proof of Andrew Swenson:

> LAND OFFICE, *Willow River, Oct. 24, 1854.*
>
> Andreas Svenson applied to prove his preemption to SW. ¼ of sec. 28, T. 49, R. 14; declaration filed Oct. 24; settled Sept. 28, 1854.
>
> I, Laurens Johnson, of Douglas County, Wis., do solemnly swear that I am acquainted with Andreas Svenson, of said county; that *he is a married man* and filed a declaration to become a citizen of the United States; that he

commenced improvements and made a settlement on the southwest quarter of sec. No. twenty-eight, in township No. forty-nine, of range fourteen, on the twenty-eighth day of Sept., 1854. At that time he commenced the erection of a dwelling house, which he continued working at until completed, *at which time he moved into and has continued to occupy. Said house is built of logs about 12 by 14 feet on the ground, one story high, with fireplace, etc., and is a comfortable residence.* He has also cleared a parcel of land ready for cultivation and cut a quantity of rails on said land and I have reason to believe *he intends making additional improvements on said land.* He has not quit his residence on his own lands for the purpose of making said preemption. Nor am I in any manner interested in his procuring a title to said land.

LAURENS (his x mark) JOHNSON.

Subscribed and sworn before me this 24th day of Oct., 1854.

J. O. HENNING, *Register.*

PREEMPTION AFFIDAVIT OF ANDREAS SVENSON.

I, Andreas Svenson, of the county of Douglas, State of Wisconsin, claiming the right of preemption, under the provisions of the act of Congress entitled "An act to appropriate the proceeds of the sale of public lands and to grant preemption rights," approved September 4th, 1841, to the southwest quarter of section number twenty-eight of township number forty-nine N., of range number fourteen W., subject to sale at Willow River, do solemnly swear that I

have never had the benefit of any right of pre-emption under this act; that I am not the owner of three hundred and twenty acres of land in any State or Territory in the United States, nor have I settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to my own exclusive use or benefit; and that I have not, directly or indirectly, made any agreement or contract in any way or manner, with any person or persons whatsoever, by which the title which I may acquire from the Government of the United States should enure, in whole or in part, to the benefit of any person except myself.

(Original.)

ANDREAS (his x mark) SVENSON.

I, J. O. Henning, rgt. of the land office at Willow River, do hereby certify that the above affidavit was taken and subscribed before me this twenty-fourth day of Oct., A. D. 1854.

J. O. HENNING, *Register.*

Some of the proofs were made before the officers of the United States land office at Willow Creek, and the deeds from them to Stinson were acknowledged before one Moses Gibson, notary public, whose office was with the officers of said land office, and who was at that time a candidate for State senator and a partner in business with one of the land officers. This man was subsequently a clerk in the Treasury Department at Washington, and was sworn in the case and testified that at the time of these occurrences he was running for the State senate and had started off on his campaign; that

Stinson, for want of a notary public to take such acknowledgments, followed him across St. Croix Lake, caught up with him in the wilderness, induced him to go back and administer the necessary oaths, and paid him $20 in gold for his services. The clerk in the land office, one John S. Moffat, testified that Stinson was in the office while the proofs were being made, and that he saw Stinson hand the men something which he supposed to be money, and that this happened on two different occasions. He affirms the testimony of Gibson that the papers were made out and acknowledged before Gibson and remembered the names of two of the parties.

Later on the patents were issued for these lands by the United States Government to the parties who had acted as preemptors, and Stinson continued in possession of the lands, either personally or through his son, the pretended conveyee, down to the time of the beginning of the present suit. At the time when the first case was instituted the lands were still his—that is, in his name—but were afterwards conveyed to his son; but ample proof was taken in this case showing that no consideration passed from his son to himself for such conveyance.

STATEMENT OF DEFENDANT'S CASE.

The defendant, from proofs taken and evidence submitted in his behalf, in substance and effect, while admitting the employment of John Johnson as his agent, claims he employed the entrymen for the legitimate purpose of cutting out and clearing the streets, and

building a dock in Superior; that while the men did enter the lands in question at the time, they did it on their own account and he merely purchased from them after their final proofs had been made and they had secured their final certificates or "duplicates," as they were commonly called, from the land officers at Willow River. He submitted evidence to support the allegations in his answer, that he purchased for his father and that he obtained all the lands which did not descend to him from his father through the settlement of his father's estate; that he did for a long time pay taxes on the lands; that they were permitted to go to sale and he then procured tax titles on them; that there were and are many tax levies against them unpaid, and that in addition to the conveyance to defendant Henry J. Stinson, certain conveyances were made and one railroad right of way condemnation had across portions of the land. He also made claim that the conveyance to his son, said Henry J. Stinson, was in good faith for the valuable consideration of $40,000, which was represented by his son's services to him, but no part of it in money. As on the main substantive facts the testimony and evidence will best demonstrate the facts, we refrain from further statements until such testimony and evidence is considered in detail by way of argument.

The case made by Henry J. Stinson in his testimony was almost wholly confined to his claim of good faith in the purchase from his father of the lands in question.

THE PROOFS.

Before taking up and recounting the proofs on both sides it may be well to show the important particulars in which the defendant, Stinson, in his answer, testimony, and evidence has made admissions, has been guilty of plain evasions, and has wholly failed to meet complainant's averments, testimony, and evidence.

Mr. Stinson made answer, under oath, and he was subsequently called for cross-examination by the complainant. His answer is found at pages 24 to 39 of the record, and his examination at pages 148 to 192, inclusive, of said record.

In his answer he admits:

1. That all the proofs and entries were made on the dates charged in the bill of complaint.

2. That the proofs presented to the land office were to the effect stated in the bill, and upon them the entries were allowed.

3. That in each case deeds were made to Stinson on the very day of entry.

4. That he was very much interested in Superior town site.

5. That he employed John Johnson to hire men to go up there and work.

His denial, at page 32, of the fraudulent character of the proofs made to the land office, is evasive, and contains a negative pregnant, namely, in the denial that *all* such oaths, etc., were false and fraudulent.

The same is true of the next paragraph, in which he denies that *neither* of the persons named resided upon and improved the land in good faith, etc.

He does not allege that the law *had been* complied with, but that he *was so informed.* He avers that at the time the conveyances were made *he believed* the men had complied with the law and the rules of the land office so as to entitle them to entry. This is a statement of his legal conclusion, but no denial of the *facts alleged,* nor of *his knowledge* of such facts.

Turning to page 36 it will be seen that he only states *on information and belief* that the land was purchased after entry, which is either intentionally evasive or else leaves it open to inference that he left the arrangements to his agent.

In his examination he admitted that the wages promised the men was $30 per month (p. 171) and that he may have furnished provisions too (p. 170); also that he was out in the woods and saw the Swedes there making one of these shanties (p. 174); said he *could not recollect* if in settling with the men he made any deduction for the time they were at work in their claims, though he knew the *association* did not pay for that (p. 175), nor whether he did not make an appointment with them at Taylor's Falls to meet him at Hudson (p. 176); admitted that he did meet them there a week or ten days later as sworn to by them, and "secured" the claims (p. 177); admitted he had read the testimony of the Government's witnesses before his examination (p. 180), and though he claimed he was acting for and had to account to the association, in respect to the hiring of the men (p. 170), and for his father in respect to the land investments, he refused to

disclose and denied all knowledge of the amounts paid them on either account (pp. 177–182); declared he did not know whether the men were paid for their time coming down to Hudson, but thought it was included in the deed, as all "claims" were then settled (p. 179); he at first denied that he paid the Government for the land (pp. 179–180); repeated this denial in most positive terms (p. 188); immediately afterwards admitted that he may have done so through Gibson or Johnson (p. 190); later went back to his denial, and this time denied any advances *by agent* (p. 192); after having a second time admitted that he may have done so, either personally or by agent, and accompanied it by the statement that *it was his habit thus to advance money* (p. 192); admitted that he employed Gibson (pp. 178–9); that he traveled with the men on the return journey to Taylors Falls (p. 182); that besides being employed to hire the men he may have acted for him in paying money (pp. 183, 190, 192) or negotiating for land, and had, he "supposed," something to do with the 1855 claims, though he would not admit employing him; finally he admitted that he was at Hudson in 1854 when these preemption entries were made, and that he "probably" knew the Swedes were to be there (p. 191).

The facts which he does not deny are, perhaps, equally significant with those he expressly admits.

Thus he does not deny the conversation related by the surveyor, *Stuntz*, nor any of the facts sworn to by him.

He does not contradict the testimony of David Carlton in any particular.

He makes no denial of the buying off of Burbank to leave his claim, the giving to him of a written proposition or obligation, or the payment to him of money after the patent issued, all of them damaging facts, showing his knowledge of the weakness in his title.

He does not deny the statement of Lorenz Johnson that he told Johnson to "go to the woods."

He does not deny coming to Lonquist in the woods and saying he wanted them to go down and preempt the land for him, the very day preceding their start for home, as testified by Lonquist.

He does not controvert Gustav Johnson's story respecting the conversation with his brother, John Johnson, at the Fuller House in St. Paul.

Neither does he deny the testimony of Peter M. Peterson that he directed him to "go to the woods," and that just before starting homeward he cautioned the men to "let no one have the claims but him."

Nor does he make denial of the facts sworn to by John S. Moffatt.

While it is conceded that a patent should not be set aside on doubtful or inconclusive testimony, and especially after the lapse of so many years, we respectfully submit that the evidence in this case is clear, convincing, and satisfactory upon both issues—i. e., as to the preemptions being made for the benefit of Stinson and as to the fraudulent character of the proofs filed in the land office; and we confidently assert that seldom in a

court of justice has a case of fraudulent combination been more clearly proved, even where the events were of recent occurrence.

We conclude with a citation of authorities.

ARGUMENT.

In order to understand clearly the evidence of the several witnesses, its bearing upon all the matters in controversy, and the weight and effect to be given to it in determining the issues herein, it is necessary to keep in mind the fact that the entries in question upon which the fourteen patents were issued, whose validity is assailed in this action, were made by two separate bands of Swedes in two successive years, viz, in 1854 and 1855.

The alleged settlements in 1854 were made by John Johnson, Lorenz Johnson, Sven Larsen, Peter Norell, Andrew Swenson, Aaron Peterson, Martin Larsen, John Johnson (known as John Johnson, 2d, and later, as John Lonquist), and Sven Magnuson. Those of 1855 were made by Otto Wallmark, Andrew Wallmark, Gustave Johnson or Vieborg, Israel Johnson, and Ole Westerland.

We give herewith, and immediately following this paragraph, a schedule showing by separate numbered columns:

1. The land office numbers of the several entries.
2. The names of entrymen.
3. The names of entrymen who were married at the time of taking up claims, and whose families were living in Minnesota, indicated by the letter M.

4. Those who were living at the time of the trial, indicated by the letter L.

5. Those who have given testimony in the case, indicating complainants' witnesses by the letter C, and those for the defense by the letter D.

6. The dates of alleged settlement.

7. Dates of making proof and payment for the land and conveying to Stinson.

8. Dates of the several patents.

This is given for convenience of reference in considering the testimony.

The entries are arranged in classes, the first showing those preemptors who located in 1854, and proved up, the same year; second, those who located in 1854, but failed to prove up until 1855; and third, those who both located and proved up in 1855.

Schedule.

CLASS 1.

1	2	3	4	5	6	7	8
1847	Andrew Swenson	M.	....	....	Sept. 28, 1854	Oct. 24, 1854	Dec. 15, 1855
1848	John Johnson, 1st	....	....	....	Sept. 27, 1854	Oct. 24, 1854	Dec. 15, 1855
1849	Peter Norell	M.	L.	D.	Sept. 27, 1854	Oct. 24, 1854	Dec. 15, 1855
1850	Sven Larson	....	....	....	Sept. 26, 1854	Oct. 24, 1854	Dec. 15, 1855
1851	Lorenz Johnson	M.	L.	C.	Sept. 28, 1854	Oct. 24, 1854	Dec. 15, 1855

CLASS 2.

2906	Aaron Peterson	....	....	....	Aug. 17, 1854	June 1, 1855	May 1, 1856
2907	Martin Larson	....	....	....	Aug. 17, 1854	June 1, 1885	May 1, 1856
2908	Swen Magnuson	....	....	....	Sept. 26, 1854	June 1, 1855	May 1, 1856
2212	John Johnson, 2d (Lonquist)	M.	L.	C.	Sept. 26, 1854	June 22, 1855	May 2, 1859

CLASS 3.

3208	Otto Wallmark	....	L.	D.	June 11, 1855	June 22, 1855	May 1, 1856
3209	Gustave Vieborg	....	L.	....	June 11, 1855	June 22, 1855	May 25, 1865
3210	Andrew Wallmark	....	L.	....	June 11, 1855	June 22, 1855	May 1, 1856
3211	Ola Westerland	....	L.	....	June 11, 1855	June 22, 1855	May 1, 1856
3213	Israel Johnson	....	L.	C.	June 11, 1855	June 22, 1855	May 1, 1856

In 1854 a number of capitalists, among whom was Stinson, combined, in what in these later days would be called a syndicate, to lay out a town site upon the land now known as the city of Superior. He expressly states in his answer that he was much interested in the project and to a large extent had personal charge of the improvements undertaken by these parties. He was apparently an enthusiast in the work. The location was a fine one at the head of navigation in Lake Superior, having one of the finest harbors ever formed by nature. Naturally, outside of the lands selected by the syndicate, he desired to obtain, individually, as large a tract as possible. A surveyor residing there, named George R. Stuntz, who had already done much in his profession for the Government in that vicinity, testifies that Stinson came to him in the Spring of 1854 and asked him if he would undertake to subdivide a township containing the lands in question early in the season, saying to Stuntz, "There are a lot of us who want to get this done." Stinson further told Stuntz that he would get a survey order if Stuntz would do the work. The latter consented and Stinson said to him: "We are anxious to make some investments in lands here and we want to get through with it quietly." These lands were not subject to private entry and were not so subject until sometime after 1855. The only way of acquiring them, then, was by preemption, and such preemption must necessarily have been clandestine and fraudulent. All the testimony shows that the lands were worthless for agricultural purposes

and chiefly, if not wholly, available for their peculiar location.

The order for the survey was subsequently sent to Stuntz. How it was procured he did not know, but it appears that Stinson was well aware of the time when the surveying was to be done. The testimony of Stuntz respecting the time he made the survey and what happened is as follows:

Stuntz testifies:

> I saw Stinson there with some men the first day I operated under the contract. I got my crew made up and went into the woods, and there was a crowd of men following me all day, and Stinson was one of them. He had twelve or fifteen men with him in the morning, I should think. I had a nice day, and I ran up 5 or 6 miles that day. These men with Stinson were mostly half-breeds. I don't remember any Swedes. I don't think there was. They were not known to me. He seemed to be talking with them a great deal. I was busy running lines, and didn't pay much attention to them. I noticed they put up shanties as fast as I would locate corners. I would run to a random line and get back to the quarter post and find a shanty well under way on each quarter. I think I surveyed eight claims the first day. I don't know what claims they were, nor the names of them that filed on them. There seemed to be a crowd making these shanties that day, but who they were for I didn't inquire. It looked as though Stinson was very active

around talking with them. These claims were on sections 25, 26, and 36, in town 49, range 41. (Rec., p. 129.)

Stuntz's evidence does not identify the particular land upon which Stinson located the parties, nor does it show that any of the lands described in the bill of complaint were covered by the entries made on the first day of the survey, which was begun in June, while the earliest of the alleged settlements in this case was in August. It is probable that these first locations were among other lands which Stinson located in a similar manner, as he admits in his answer that the lands in controversy were only a part of those he secured in that vicinity. Whether ignorant Swedes or half-breeds, it is plain that the parties were fit instruments of the proposed fraud, and the acts were evidently done in carrying out the scheme he partially disclosed to Stuntz. The evidence respecting these first locations in June was perfectly relevant and proper to show Stinson's general purpose and the motive therefor. His hunger for land was not easily satisfied, as may be judged somewhat by the extent of his present possessions, which are partially indicated by the descriptions contained in defendant's Exhibit A[6], at pages 303–309, of the record. It is also apparent that for want of available preemptors in the immediate vicinity Stinson went over into the State of Minnesota.

In Chisago County, near St. Paul, living upon a little farm belonging to Stinson, was a Swede named John

Johnson, who had learned to talk the English language. He lived in the midst of a settlement of his countrymen, many of whom had just arrived from their native land, and were wholly ignorant of the language, laws, and customs of the country, and these Stinson selected as parties who could be duped and managed to serve his purpose. Having in charge the improvements of the town-site company, a pretense of hiring them to work on the town-site improvements would aid in covering the fraud. Having formed his plans, he went in person to Chisago County, a six-days' journey on foot, through an almost trackless forest, which shows the strong incentive for his scheme.

HIRING OF PREEMPTORS.

This was in the summer of 1854, and subsequent to the time when Stuntz testified he was so active in the use of half-breeds for purposes similar to those charged in this complaint. Arrived in Chisago County, we find him using this same John Johnson, whom, as we have seen, he admits having hired to induce the men to go to Superior. (See answer, p. 36, and Stinson's testimony, pp. 168–172.) Stinson does not admit that these men were hired to preempt the lands or that he authorized Johnson to hire them for such purpose. We could not expect him to do so, as it was a part of the fraud charged. But circumstances in the evidence adduced clearly indicate such fraudulent intent. Laborers for Superior need not have been citizens of the United States nor have declared their intention to become such. Neither was it important that they should

not have previously availed themselves of the preemption laws to obtain lands from the United States. Yet Stinson's agent, in securing laborers for Superior, plainly made these requirements of the men he employed. In these respects, as well as others equally pertinent to the case, let a large number of those sworn as witnesses speak to the point:

John Lonquist testifies (Rec., p. 109):

> John Johnson said that I had to have my first paper—you know the first paper—along with me, and then we went down to Mr. Stannard, down in Taylors Falls, and he gave us the paper, the first paper, and then we went from there to Superior. Andrew Ogren and Helleen, John Johnson, and some more I don't remember, went with me to Taylors Falls. Then, after I got my first paper at Taylors Falls, I went on to Superior.

(An examination of some of these naturalization papers will show that Mr. Stannard was the deputy clerk of the court.)

Peter Norell, not one of the entrymen, but a witness introduced by the defense, said, on cross-examination:

> I took out my first papers at Taylors Falls. It was before Mr. Stannard, the deputy clerk. I can't say what day it was. It was sometime that summer of 1854 anyhow, if it was August or June or July. It was before I went up to Superior. There was four or five or six of them there when I took out my papers,

and I can't recollect the names. I guess they is dead most of them. These men who were there together were some of the party who went with me to Superior. We was hired to go up there to work, and we went, starting, as near as I can tell, about the middle of August. I think it was the blacksmith—there was two of them came up there and hired us. I think one was John Johnson and the other a blacksmith from Taylors Falls. I don't remember his name. I don't know which of them suggested I should take out my first papers, John Johnson or the other man. There was four or five of us there, and they said, "We are going to take out our first papers now. We are going to have a right to vote for schools and a president and everything, that is what they say." I think it was the blacksmith, or there was two of them, spoke to me about going to get the papers. John Johnson and the blacksmith were together. They was both of them talking about it. They say, "We aint got no right to vote or say a word before we get out the papers." That is what they told me, and then I thought it don't make no difference, I came in here to settle in the United States, and I thought it was no much difference, I going to take the paper out.

Several of these declarations have been found in the land office and were introduced in evidence. They are dated within a few days of the departure of the party on their journey to Superior, and to that extent are corroborative of the testimony of Lonquist and Norell.

See declaration of Andrew Swenson, dated July 28, 1854, page 475.

Declaration of Peter Norell, dated August 7, 1854, page 474.

Declaration of Swen Larson, dated August 8, 1854, page 473.

Declaration of Lorenz Johnson, dated August 8, 1854, page 474.

It would naturally take some little time to employ and get together a party of fourteen to sixteen men, the number which the witnesses say were in this expedition (testimony of Lorenz Johnson, p. 100; Peter M. Peterson, p. 123; Peter Norell, p. 241), to enable each to make his arrangements for leaving home and to equip and provision them for a six days' journey through the woods; and it was during this period of preparation that the matter of naturalization was looked after. This would explain the few days difference in the date of the naturalization papers. But why all this care to see that this party of laboring men had taken the initiatory steps toward citizenship? Neither Stinson nor Johnson were engaged in a political campaign in Wisconsin. According to the theory of the defense, and according to Stinson's testimony, the men were merely employed for a few weeks' work upon the streets and docks at Superior. They had no thought of becoming residents of Wisconsin. Indeed, several of them had families living in Minnesota, which State all of them in their testimony uniformly refer to as their home. Naturalization would not make them more efficient workers—

would not enable them to cut more trees, shovel more dirt, nor handle more lumber.

It was necessary to qualify them to do that which constituted the real object of the expedition, and their employment, viz, to preempt land for Stinson, and that is the explanation, and the only explanation, of the pains taken to have these foreigners, who were to be the tools employed by him, properly equipped at the outset with naturalization papers, and this marks the second step in carrying out the scheme, the inception of which we have seen in his interview with the surveyor.

It appears that the party came together at Taylors Falls, from which point they took their departure in a company for Superior, and a mercantile firm at that place, Stannard & Fox, provided them with their outfit of provisions, etc., for the journey.

Peter M. Peterson, one of the party, testified (p. 122):

> I did not take any land in Douglas County, but I was working for Stinson there. There was another fellow Stinson hired to get fifteen or sixteen men to go up there and work for him, and so he come to us fellows around there and told us if we want to work we can go up there for $30 a month, and we all concluded that we would go, and when we got to Taylors Falls he asked us if we had any claims before, and there was two or three—I can't remember their names—more besides me, that had claims down at Chisago Lake, and we could not take any claim, and he said, "If you have a claim we don't want you." The boys said, "Well, if

you won't let us all go, none of us will go," and that is the way we come to go there. We worked there a couple of months.

And at the same page he says: I think it was Stanner who asked me at Taylors Falls if I had a claim before. If I remember right, Stanner and Fox had a store together, and they were going to give us provisions to carry us along there at Superior. It was Fox who told me if I had a claim already they didn't want me to go.

This evidence shows conclusively that the ostensible purpose in the employment of these men, viz, working on the streets and docks at Superior, was not the real or principal object of such employment, and only more clearly demonstrates what was shown by the solicitude regarding their naturalization, that the main thing kept in mind in making up this company was to procure men who were *legally qualified to act as preemptors.*

There is plenty of other evidence, both direct and circumstantial, all pointing in the same direction.

Lorenz Johnson, who entered the northwest quarter of section 33, town 49, range 14, testified (p. 98):

John Johnson, I guess, first spoke to me about taking up land in Douglas County. It was at Taylors Falls. Nobody was with me. He said nothing except he wanted me to go and work by the month, $30 a month wages, at Superior. He didn't say anything particular about taking up the land, but we should take 160 acres each. I mean by that James Stinson. He was in Superior. I don't understand what

Stinson says. It was only Johnson talked to me about it. Johnson was hired just like me from Stinson. He said so himself. Stinson hired me just the same as the rest. I was at Taylors Falls when he hired me. Stinson and Johnson were together at Taylors Falls when these men were hired. I didn't speak English then, but Stinson would speak to Johnson, and then Johnson would speak to me in Swedish. He hired me at $30 a month. When we got to Superior we went to work first to lay out the streets. John Johnson told us where to go on the land. We built cabins—shanties. My claim was 160 acres. These other men who went over there with me had claims like mine. I don't know anything about the size, but suppose they took 160 acres each. I staid in Superior two months. I was not paid until I came to Taylors Falls. There I was paid at the rate of $30 a month for two months.

While we were in Superior we built a pile driver on the lake there, and then cleared the streets. Stinson was there all the time. He went down with us to Taylors Falls. He said when we left him, we should meet him in Hudson ten days after. We left him in Taylors Falls. We were all together coming down, John Johnson and the rest (p. 100). All the men that went up with me worked on the streets and the pile driver. They had their own camp, and lived in it all together. * * * I went out there on that claim because Stinson told me. He went out on the land with us, the whole crew (cross-examination, p. 102).

After we had been at Superior, the first to speak about taking land was Stinson. He came in the morning and told us to go to the woods. I couldn't understand what he said, but Johnson told us so. He told us to go out in the woods that morning. Johnson went with us too. Johnson and Stinson was both there when the land was selected and we built the shanty (p. 102). I said that this man Stinson came with us all the way from Superior down to Taylors Falls. He carried satchels and came every step back to Taylors Falls.

Coming back now to the time when the men parted with Stinson at Taylors Falls, it will be remembered that they were to meet again in Hudson ten days later. Hudson, or as it was then called, Willow River, was where the United States land office for the district embracing Douglas County was then located.

The witness continues (p. 100):

From Taylors Falls I went to Chisago Lake, and then down to Hudson in just ten days. The others went down too, John Johnson, Peter Norell, Peter Magnus, and one by the name of Alstrom. Some are dead, so I forget the names of them. When we got down to Hudson I saw Stinson. He met us there. I was at the land office and signed deeds. Stinson was there with me. I got $10 when I went to Hudson. Stinson paid me the money himself. I didn't pay any money to the land office. I don't know who paid the money for the land; I did not see anybody (p. 101); I did not have any bargain with James Stinson to sell him

> this land, before I made the entry. I didn't understand a transaction like that. I had just come over from the old country, and did not understand. I just done what John Johnson told me. He told us to take some land, but I did not understand what the thing was. I didn't *pay for the* entry of the land, and I don't know who did. John Johnson told us we should meet at the land office at Hudson, and he went with us. He interpreted for us at the land office. I don't know who made out the papers.

The record shows that the proof and entry by the witness and the conveyance from himself to James Stinson were all made on October 24, 1854.

Assuming that the party started from Taylors Falls in the middle of August, as testified to by Norell, and that they parted from Stinson at Taylors Falls on their return ten days previous to entry, it will be seen that almost exactly two months had elapsed from the time the party left home until their return, so that Stinson paid witness for the entire time of his absence, including the time he was supposed to be engaged in making a settlement for his own exclusive benefit upon the land entered in his name. Comment on this fact would be superfluous.

John Lonquist, another preemptor, who, according to the testimony of Lorenz Johnson, went at that time by the name of John Johnson, 2d, testified (p. 109):

> I am a Swede, and came to this country in 1853. I did something, I guess, about taking up land in Douglas County, Wis. John Johnson spoke to me about it first. It was right at my

home. Andrew Ogren was with me. Johnson said to me that Stinson wants us to go up to Superior and work, but he don't say to me that we should take a claim for him. He said I had to have my first paper—you know the first paper—along with me, and then we went down to Mr. Stannard, down in Taylors Falls, and he gave us the paper—first paper—and then we went from there to Superior. I was to be paid $30 a month. John Johnson told me that. He didn't tell us anything we were to do before we got up there. When we got up there, he gave us an axe and we chopped down some wood right there in Superior in the streets; I believe it ought to be streets. It was all wood then. I forget how many there was of us, twelve or thirteen, I believe. We lived in a little shanty that was built, I guess, before we got there, and we stayed—all of us—in the little shanty, and took our victuals and grub there; slept in that little house all together. I forget how long we stayed in Superior. I think it was about a month. I saw Stinson there several times on the street.

Then we went out in the woods and put up the shanty, put some kind of brush on the roof, me and three others; I have forgotten their names. John Johnson went out with us, but he didn't stay there. He put each of us on the claim, but I don't know anything about the claim. He told us to stay right there and put up the shanty. I can not tell how large a tract it was I settled on. I did not understand about it. I was never told whether it was 5 acres or

160 acres, or anything. We built that shanty on the land I told you. * * * I thought it was a little shanty—four of us slept there one night. I think it was some kind of a corner, but I can't tell you about the corner. Well, I guess I think it was a section—a section corner—that is what I think. * * * John Johnson went out there with us, but didn't stay. He showed us where to build the shanty (p. 111). We slept there one night; then Stinson came there and he talked with the boys, but he never talked a word with me. I never talked with Stinson yet. He talked with Ogren. I can't tell what he said I couldn't understand. Andrew Ogren told me he wants us to preempt land for him. Stinson came there alone. John Johnson wasn't with him. Then we went out from the shanty and went home again to Taylors Falls. I forget how soon we started—I think the next day. All the boys that had been living there in the shanty went back with me. Stinson was along; John Johnson, too. We walked back.

(P. 113) At Taylors Falls Johnson gave us money. He got it from Stinson. I got $30. I can't tell how it was with the other men. I believe they get $30, too. *They didn't take me down to Hudson until the next year.* Johnson and Wallmark was there at the same time; Israel Johnson, and me. I saw Otto Wallmark and Andrew Wallmark, and I forget the other boys that was there. They stayed outside of the door, and Stinson was with them. I mean he was with the Wallmarks. They were outside of the house there. I guess guess it was the land office.

Stinson was there when I came. He gave me $2 and told me to get some schnaps. I took all the boys, and not any of them wanted to have anything, so I kept the $2 myself. After we came down again this John Johnson took us up in the land office, and there we signed. There was a fellow up there, and he stand up and told us to hold up our hands. I don't know what that means. I don't take my hand up and John Johnson take hold of my hand and lifted it up that way, and then he looked at me, and I guess we were sworn, and after that we were done. He had something to say to Stinson there, but I couldn't understand a word, so when we were done we went out again to go home, all of us. I paid no money to the land office; not a cent. I can't tell whether he paid any money for me or not. I got $20 from Stinson. It was paid by Stinson himself. He handed $20 in gold to me, and I just took it and he went back in the office again.

I don't know if I made a deed to Stinson. I don't remember the description of the land; I never heard it. I didn't ask for it, either. Stinson said something to me. I didn't see whether the other men got money from Stinson or not. He said something to me when he paid the money, but I didn't understand it.

(Cross-examination, p. 115) I couldn't talk English at all at that time, and he couldn't talk Swedish, so far as I know.

Q. You never entered any land that you know of?

A. No.

Q. You never sold any land to Stinson that you know of?

A. No.

Q. This all happened a good many years ago, and has passed out of your mind, has it not?

A. It happened a good many years ago, but I think I tell pretty well about it.

Much comment was indulged in by counsel for appellees, at the trial, upon this statement of Lonquist's, that he had not entered nor sold any land that he knew of, but, as will be seen later, his story of what was done at the land office, and when it was done, is corroborated by the written records of that office, and it is perfectly apparent from his simple but vivid narrative that he was a mere passive, ignorant tool in the hands of the appellee, James Stinson, and his man, John Johnson, and that he went through the form of entering this land at their bidding.

That the full significance of this testimony may be appreciated, it is necessary here to call attention to some other pertinent facts which appear in the evidence.

It will be seen from an examination of the preemption papers and the pleadings and stipulation in this action that four out of the nine preemptors employed by Stinson in 1854 did not prove up until June, 1855.

Thus, by stipulation found at pages 476–477 of the record, it appears that Aaron Peterson, who entered the northwest quarter of section 5, town 48, range 14, made his alleged settlement on August 17, 1854, while by the allegations of the complaint, admitted by

the answer, the date of filing his proofs and making entry was June 1, 1855.

By the same document it appears that Martin Larsen also made his alleged settlement on the northeast quarter of section 6, town 48, range 14, on August 17, 1854, and proved up and entered the land on June 1, 1855. That John Johnson, 2d (now Lonquist) made his alleged settlement on the northwest quarter of section 1, township 48, range 14, on September 26, 1854, while he proved up and entered the land on June 22, 1855. Also that Swen Magnuson made his alleged settlement on the northeast quarter of section 2, township 48, range 14, on September 26, 1854, while the proofs and entry bear date June 1, 1855.

It also appears by the bill and answer that Otto and Andrew Wallmark, two of the 1855 preemptors, made their entries on June 22, 1855, *the same day that the entry of John Johnson, 2d, or John Lonquist, was made.* The presence of the Wallmark brothers at the land office on that date is also attested by their declaratory statements (record, pages 57 and 58), and by the affidavit of Otto Wallmark supporting the Gustave Johnson claim, found at page 61 of the record. That John Johnson, first, was likewise present on this occasion is proven by Exhibit 11, being his affidavit in proof of the preemption claim of Lonquist or John Johnson, 2d, found on page 63 of the record. This documentary evidence, together with the facts detailed by the witness, clearly identify John Lonquist with John Johnson, the 2d, who entered the quarter section above

referred to, and substantiate the statement made by Lorenz Johnson in his deposition taken in 1893, that this preemptor changed his name to John Lonquist.

Take in connection with this witness' statement the testimony of witness, Peter M. Peterson, who accompanied this party both going and returning, to the effect that none of the men ever went back to their claims (rec., p. 125), *neither of whom is contradicted by any witness in the case*, and the absolutely fraudulent character of the proofs sworn to and entries made in June, 1855, in the cases of John Johnson, 2d, Aaron Perterson, Martin Larsen, and Sven Magnuson, and the consequent invalidity of the patents issued thereon is established beyond controversy.

But this is a digression from the matter we were considering, which was the proofs showing the entries to have been made by arrangement with and in the interest of Stinson.

Gustave Johnson, a witness for complainant and a brother of John Johnson, the first, but not a preemptor, testified that in 1859 he was at the Fuller House in St. Paul and overheard a conversation there between James Stinson and said John Johnson. His statement was as follows:

> My brother was talking to him there to get some land from him—talking to James Stinson. He had promised him some more land up there. He got some land from Stinson—57 acres—for a claim he made over at Superior. He promised to give him as much land at Chisago Lake as he preempted up there for him, but he only got

> 57 acres. Now he wanted another fraction there; that was what he was talking to him about at the Fuller House, but Stinson answered that he didn't have a map or else he would write out the deeds, but he didn't have a map. He also said something to my brother about not having kept his contract. He said: "You can get that land for what it cost me. You didn't fulfill your contract." That is what he said to my brother. My brother died in 1861. (Rec., pp. 116–117.)

While this testimony does not disclose in what respect Stinson claimed the contract on Johnson's part had not been performed, yet as it has already been shown that four of the party who were taken to Superior in the year 1854 failed to present themselves at the land office and perfect their entries until the following year, we may surmise that others failed entirely to prove up.

Whatever may be the true key to this conversation, the pregnant fact appears that the preemption about which they were talking, and the validity of which is involved in this action, was made pursuant to some contract between Stinson and Johnson by which the latter was to receive for his services in preempting lands for Stinson at Superior an equal amount of land in Minnesota. It should be noted that this testimony of Gustave Johnson is also entirely uncontradicted.

Peter M. Peterson, a witness for the Government, and also a nonpreemptor for reasons already shown,

viz, because he had already made a prior preemption in Minnesota, testified (commencing at page 122 of the record):

> Johnson didn't say anything to us about taking claims until we had been at Superior about a month. We were working over there clearing the streets and before we went home Stinson told us to go to the woods for claims. * * * It was John Johnson hired me. He hired me at $30 a month. If I remember right, there were fifteen that went along. When we got to Superior we cleared some streets, cut some wood, and helped them drive pile drivers. Stinson told Johnson to tell us what to do, and he let us out to somebody else to work. I don't believe Stinson had any work himself that I know of. I would not say that we had any boss at all. He did not care what we were doing, but John Johnson was the man that looked after the boys. *Stinson was there at Superior. We were along with him, and he told us about going out in the timber.* That was in the latter part of September, I think, as well as I can remember. I think it was then, but I can't remember the date we built a shanty. We was along with all the boys, Stinson himself, too. He laid out the claims himself. We did not do anything about the lands. *When we got to the woods we was building shanties for them other claimants, you see, and Stinson showed us where to build them.*
>
> I don't know if there was any fractions. There was generally 160 acres in a claim, and there was one shanty to each 160 acres. Stin-

son told the boys they should build a shanty, make a hole for a fireplace in the middle of it. *I had no claim, but I heard him tell the other boys that when we got to Hudson they should not let anybody else have the claims except him, and that they should prove up and give him the deed for it.* * * * After these shanties were built we went home, and he followed us. From Superior we went first to Taylors Falls. We traveled to St. Croix River and built a kind of flat and went down the river and stopped at a place called Sunrise, I think, and had our supper there, and then went to Taylors Falls. Except as we went part of the way on the river, we walked 60 miles from Superior right through the woods, no road at all. Then from Sunrise to Taylors Falls, 18 or 19 miles. Stinson walked along with us all the distance from Superior. * * * While working in Superior we lived in kind of a log house all together. John Johnson was with us. He was the head man for Stinson. *None of the men have returned to these shanties. We all went home together.*

Peter Norell, a preemptor, *and a witness produced on the part of the defendants*, while he denies that he was in terms hired to preempt land, yet agrees substantially with complainant's witnesses in respect to what was done.

He testified (pp. 251–252) that he was hired by a blacksmith from Taylors Falls, whose name he had forgotten, who came to him with a man named Ogren (Ogren being another name for Swenson, one of

the preemptors), that he was to have $30 per month; that all of his party were hired on the same terms; that before starting he was persuaded to take out his first papers (pp. 251–252) that the party, consisting of some fifteen of his countrymen, started out together from Taylors Falls about the middle of August (p. 242) and walked all the way to Superior, a six days' journey (p. 243); that he was not told what he was to do until he reached Superior (p. 257); that after they arrived there they all lived together in a log house and worked upon the streets and also upon a steamboat bridge, by which he evidently meant a dock (p. 242); that they got their orders through John Johnson, or Nils Berg, another of the party who could speak a little English (p. 254), and that a few days before leaving Superior Johnson and Nils Berg spoke to him about going out in the woods and taking a claim (p. 257). He protested it was no place to live and he did not care for a claim, but being told the rest were going to make claims he consented to do likewise (p. 258). He says Johnson put him on a piece of land and showed him where to build a shanty and instructed him what he was to do (p. 258). After his shanty was built and he and another, whom he refers to as his "witness," had slept a night apiece in each other's shanties, this is his account of what took place (pp. 260–1): "Then they came rushing up saying that we had to go down."

Q. Who came rushing up?

A. Nils Berg and John Johnson.

Q. Told you you would have to go down where?

A. *Go home; leave the place and go home to Chisago.*

Q. *Did they say why you would have to go home?*

A. *Oh, well, they say, "The work is done."* * * * I stayed on the claim three or four days.

Q. Well, while you were doing that, were you also working on the streets as well?

A. No; I worked on the claim.

Q. And then after you got your shanty built and slept in it, and slept in this other witness's shanty, Johnson and this other man came out and told you that you would have to go home; that the work was over?

A. Yes; that is what he said.

The streets in Superior were not finished then, not hardly. We cut the woods out of the streets there, the main street; cleared the first street close to the bay; just one street, and the bridge that I speak of, that wasn't built; it wasn't hardly done. It wasn't finished when we came away. Nils Berg and Johnson told us to go home. They came up there, it was six or seven or eight of them come up to my claim there and say they was ready to start for home. They said nothing about going down to Willow River, not a bit.

The expression "the work is over," or "the work is done," is worthy of particular note. He testified that only one street had been cleared, and that the "bridge" or dock was still unfinished when they came away (p.

261). Stinson testified that work was plenty and labor scarce (p. 187), and the same conditions still prevailed in 1855, for Otto Wallmark so testified and gave this as one of the reasons which induced him to go up there (p. 219.) They had then been out in the woods some three or four days, and had done no work in town (p. 262). The expression could not refer to work they had already abandoned. Neither did it mean there was no more work there, for that was as far as possible from being true. *Plainly, and beyond controversy, it meant that having now gone through the form of making preemption settlements upon the land pointed out to them by Stinson, or his agent Johnson, the job they came there to do was completed, and it was time for them to return home.*

Norell further testifies that they started right away after this for home; that the entire party who went up there returned in company (p. 255); that Stinson came with them as far as Taylors Falls, walking all the way except from St. Croix, where they built a raft, to Sunrise, on the river, about 18 miles from Taylors Falls (pp. 255, 256); that he was paid by Stinson at Taylors Falls, and, like Lorenz Johnson, was paid for two months' time (p. 255); that from Taylors Falls he went home to Chisago Lake, where he arrived the forepart or middle of October (p. 243).

He had been home from one to three weeks when Berg, in company with Johnson, came over and told him they were going down to Hudson to "prove up." He states that this was the *first he had heard* about proving up on the land;

that he did not understand what was meant, and that Berg had to explain it to him. If this and his story of the subsequent transactions were true, it would not establish a *bona fide* preemption, but would show that he was an ignorant tool in the hands of Stinson and his agents, without a contract perhaps in the technical sense, for the doing of the particular acts, but submitting to his control, and while in his employ going through the mechanical processes of building a shanty and performing the other acts of pretended settlement, and then signing such papers as he was told to by Stinson, or his go-betweens. We believe this is a mere pretense on his part, possibly induced by a hope that he may in some way reclaim the land now it has become valuable, and we claim that his conduct all through the transaction evinces that he well understood the preemption was made for the exclusive benefit of Stinson. We point to the fact, to which he had already testified, that he and his "witness" slept one night, alternately, in each other's shanties on the claims (pp. 243, 261), as showing that he understood proof was required to be made.

Even upon his own story, however, it is clear that when called on by Johnson and Berg about proving up, he had no notion of settling on the land, or, in the language of the statute, of appropriating it to his own exclusive use, but had already dropped it from his mind. So far as he was concerned, his work was done, and having nothing further to detain him at Superior he had gone "home."

He accompanied the others to the land office at Hudson and signed some papers. He claims he did not know the nature of them, but that he signed because Berg and Johnson told him it was "all right" (p. 265).

As a matter of fact, he signed a declaratory statement (p. 474), a preemption affidavit (p. 66), an affidavit in support of the claim of Sven Larson (p. 62), who, in turn, witnessed for him (p. 60), and a deed to James Stinson (p. 395).

He admits that he had not the money to pay for the land and that he paid none. Indeed, he says there was no talk among the men of using any money (p. 265). He also states that he received no money from Stinson then or afterwards on account of the land, and that the only money paid him by Stinson was the $30 a month wages paid him at Taylors Falls (p. 266).

He claims he did not sell the land and did not know that he signed a deed to Stinson, and both statements may be true. He did not *sell* the land because he recognized it was already Stinson's, and being ignorant of the laws and customs of this country he may have supposed the title went *direct to Stinson*, and that no deed from himself was necessary. That he did not know the contents of the preemption proofs may well be believed.

The land having been entered in this manner, we find that he returned at once to Chisago County, Minn., and bought 40 acres of Government land, upon which he took up his residence (p. 267). And he never afterwards paid any attention to the claim at Superior, nor made any claim to the land (pp. 247 and 268).

Assuming that he had not *sold* the land, this conduct is utterly irreconcilable with the theory that he had preempted it for himself, but is entirely consistent with the theory that he had made the preemption for the benefit of Stinson as a part of his employment.

Again, it appears by the undisputed evidence that when Stinson two years afterward desired a second deed from him, whether because the first one was executed before patent issued or because it was not signed by his wife does not appear, both Norell and his wife signed the same at once without objection and without asking or receiving any consideration. (See testimony of Levi W. Folsom, p. 347, and original deed in record, marked Exhibit A 4, W. O. H.)

It is difficult, nay it is impossible, to avoid the conclusion that there was a perfect understanding between the witness and Stinson all along, and that Norell knew, and until called as a witness in this case never questioned, that he had entered this land for Stinson. He had paid no money for the land, he had received nothing for it but the wages promised him in advance; he never looked after it, inquired about it, or claimed any interest in it, and when his employer called for a deed to perfect his title, he signed and caused his wife to sign it without hesitation. Indeed, his acts are so conclusive on this point that his *express admission* would add but little strength to the evidence.

That admission, however, we have in the shape of an affidavit made by this witness in the year 1887, about the time the United States began the first ac-

tion against Stinson to annul these patents, and found at pages 354–355 of the record.

He there stated the existence of an arrangement from the beginning for the preemption of the land in the interest of Stinson, and corroborated the testimony of Lorenz Johnson and John Lonquist in every material fact.

It is true Norell, when confronted with this affidavit, made the claim that it was not *all* read to him (p. 302), but the only part he claimed was omitted in the reading was the clause wherein it was stated that he *never built a house on the land.*

No such claim is made with reference to the statements in the affidavit that he was hired to preempt the land and that, after proving up on it, he conveyed to Stinson.

In fact, it appears that he was very careful about the making of this affidavit. He went with Mr. Streeter, the gentleman who presented it, down to the office of Peter Shaleen, a countryman of his and clerk of the court, where it was read over in Shaleen's presence. Not willing to accept a stranger's reading, he asked Shaleen to read it and, upon his assurance that it was all right, he signed it (pp. 269–271). Thus, according to his own evidence, he had Shaleen's assurance at the time that it was correctly read to him before he would sign it.

It further appears (p. 271) that he signed it with the full understanding that it charged Stinson with having taken advantage of his ignorance *to use him in making*

a preemption claim for his own benefit, the very thing charged in the bill of complaint.

Moreover, the affidavit has, beside the ordinary jurat, a certificate signed by the officer to the effect that it was not only read but fully explained to the affiant before it was signed and sworn to.

And the testimony of Levi W. Folsom and John Shaleen, respected citizens of Chisago County, and the latter probate judge of the county, not only establishes the genuineness of the signature to this certificate, but also shows that Peter Shaleen, who unfortunately is now dead, spoke both the Swedish and English languages fluently, and was therefore perfectly competent to explain anything not understood by the affiant; that he held the office of clerk of the district court for nearly twenty years, and that he was an honest, careful, and trustworthy official. (See pp. 348–351.)

It should require strong evidence to overcome the presumption attaching to this official certificate that Norell signed that affidavit with full knowledge of its contents and comprehension of its meaning, and his mere assertion that it was not fully read to him should have little weight, particularly where, as we have shown, *all his acts are in harmony with its statements.*

David Carlton, an old resident of Superior, testified in substance:

> I lived in Superior from the spring of 1852 until December, 1857. I was 33 when I left there. I knew James Stinson for

several years off and on. I saw him there with some Swedes. He brought a lot of Swedes there, and cleared the streets in what is called Old Superior. He had a good many Swedes in his employ. They were clearing the streets part of the time. By appearances I thought he had control of them. At this time I was locating land for settlers, putting them on claims; consequently we used to come in contact with one another once in a while. We were not in love with one another at any time. I could not swear to anything positive about his locating these men upon lands. I saw him out there, out on the Left Hand River. (This is another name for the Nemadji River, on which several of these claims are located.) He was there with three or four men. Was in the woods locating a piece of ground, a quarter section. A man named Castro contested the claim afterwards, but went back to Kentucky and was killed in a duel. Stinson was not doing anything himself. He was building a little shanty at this time, giving directions to these Swedes. I don't know that I ever talked with him as to whether he was locating land around there. We used to come in contact once in a while, but so far as he was concerned in respect to the land it was always John Johnson, Ole Oleson, Swen Larson, or someone else's claim. This was in the summer of 1854, as near as I recollect. * * * I was not very friendly with Stinson, nor unfriendly either. I was locating settlers on lands, and he was gobbling it up pretty fast, but we were not enemies. (See pp. 117–120, record.)

Looking back over the testimony already detailed, we see the unfolding and development of Stinson's scheme from the beginning. We note the eager desire for land springing up in his heart; we hear him whispering his desire to the old surveyor and arranging with him to run out the survey "quietly" to give an opportunity for satisfactory "investments;" we see him at first in charge of a lot of half-breeds, actively directing them and building shanties in the wake of the surveyor; then we observe him plunging into the forest and emerging again 100 miles distant, in Chisago County, Minn., gathering there a band of green Swedes and returning with them to Superior to make further "investments;" we see these Swedes acting always together, swayed with a single purpose, controlled by one will. None acts independently of the others. While it pleases Stinson that they work on the streets or docks at Superior, they all work as a party and live together in a log house. When the time arrives to make the "investments" they all quit work in a body and go to the woods. Strange to say, Stinson, who had hired them, as he says, to work in the city for the town-site syndicate, does not object to the wholesale desertion, but actually goes with them to the woods, where he and Johnson point out the claims and instruct them what to do. The men testify to this. Carlton observed it and adds his testimony to theirs. One circumstance, which should not be overlooked, is that even those of the party *who were not qualified preemptors*, like Peterson, abandoned the street work too and went into the

woods with their comrades, where, as Peterson testified (p. 123), *they built shanties for the other claimants.* He says Stinson told them to do this (pp. 122–123), and Stinson has not denied it. This shows cooperation and a joint undertaking; shows too the interest of Stinson, who paid for the work. As soon as the shanties are completed, word goes round that the work is over and the men are to go home. Stinson comes around and cautions them not to let anyone have the claims but himself. And then the entire party start on the homeward trip. It is a hard and perilous journey, yet Stinson goes with them all the way, walking and carrying his satchels most of the distance, down to Taylors Falls, where they part company, the men going to their homes and he continuing on down the river, after first making an appointment to meet again at the land office.

The culmination of the scheme is now at hand. Stinson is about to seize the prize for which he has been striving and planning. It is for this that he has taken the long journey through the wilderness. It is to keep in touch with these ignorant tools of his; to be on hand at the moment the fraud is consummated that he may receive its fruitage, and that none may escape him—this is the incentive of that long, weary tramp.

At this point we desire to call attention to what is perhaps the most important bit of evidence in the case, bearing on the existence of a preexisting contract or understanding between these men and Stinson respecting the preemption; but first a few prefatory remarks

by way of answer to criticisms upon certain of the witnesses already named.

It was charged by counsel for the defense, on the oral argument at the hearing below, that the Swede witnesses were necessarily lying and guilty of willful perjury, in so far as they undertook to testify to what Stinson said to them, because it was admitted they could not speak or understand the English language, while Stinson was unable to speak Swedish.

Yet the witnesses did not attempt to conceal these facts relied upon to sustain the charge of perjury, but frankly admitted that neither could understand the other without an interpreter, and that they depended on Johnson, or some other English-speaking Swede, and were stating only what they heard through the mouth of the interpreter and agent of Stinson. We submit that the argument is unjustifiable and the charge little short of absurd.

Moses S. Gibson, at the time he gave his testimony an employee in the Treasury Department at Washington, but formerly engaged in the exchange and banking business at Hudson, Wis., as partner with J. O. Henning, register of the land office at the time of these entries, testified that in the fall of the year in which he ran against one W. J. Gibson for State senator, and was defeated by the latter (and it is conceded that this was in 1854), he was out campaigning, and had crossed St. Croix Lake into the State of Minnesota, when he was followed up by James Stinson, who urged him to return at once to Hudson to make out some papers for

the latter, and offered him $20 in gold to do so, which he accepted. At the time agreed upon, Stinson came to the office with a band of Swedes, and Gibson filled out preemption papers for them, namely, declaratory statements, preemption affidavits, and proofs of settlement and improvement, and also made out and took the acknowledgments of deeds from them to Stinson, for all of which work Stinson paid him. He identified the preemption papers of Swen Larson, Andrew Swenson, Peter Norell, John Johnson 1st, Lorenz Johnson, all bearing date October 24, 1854, as the papers made out by him at this time, and the original deeds from these men to Stinson are all dated the same day and acknowledged before Gibson, and the body of the deeds is either in his handwriting or Stinson's.

It should be noted that Stinson admits this employment of Gibson (pp. 178–179), and though he does not remember going across St. Croix Lake after him, does not deny that it happened, while Gibson says very naturally that this circumstance made a strong impression on his mind and caused him to remember the transaction.

It may be remarked in passing that in making out these preemption proofs the concert of action still continued, the men witnessing for each other and swearing to the necessary occupancy and improvement. *Not a single outside or disinterested witness appears upon any of the papers connected with the preemption claims involved in this case.*

Now, how will the defense explain the making of an appointment by Stinson to meet these men at the land

office, and the fact that he did meet them there, when his home was in St. Paul? *He* had not personally entered any land, for being a British subject he could not. He was not there to act as a witness for them. Why then was he there? And how will they explain the Gibson incident? Gibson, it is true, was a notary public, and there was no other in Hudson; but the preemption proofs could not be sworn to before a notary, but only before the register or receiver of the land office. Presumably the land officers, as a rule filled them out. At any rate, Gibson swears he was not accustomed to do it. The presence of a notary was necessary, however, *to take the acknowledgment of deeds.* This, then, explains Stinson's need and the urgency for Gibson's return from over the St. Croix. He had made an appointment, for what? To make some deeds. And when he found Gibson was gone, he followed him up to St. Croix Lake and over into Minnesota and gave him $20 in gold to come back for the purpose of taking the acknowledgments.

Does a man do such things upon a mere *chance* that he may find a bona fide settler on the public lands who is willing to sell? Nay, it is preposterous. These lands were already promised to Stinson and he relied on his man John Johnson to bring the men around at the proper time. He was perfectly sure of the delivery, and that is why he wanted the notary there on the appointed day and why he took such trouble to find him and offered him special inducements to come back.

The proof of prior agreement between the parties would not be more clear or satisfactory, could we be admitted in

their private conferences and hear them contract in express terms.

There are no other witnesses as to these entries of 1854. Yet this is the character of proof referred to in the decree as "extremely doubtful, contradictory, and uncertain."

We earnestly submit that the description is clearly erroneous, and that on the contrary it would be difficult to conceive any proofs more direct, more harmonious, or more convincing.

PROOFS AS TO SETTLEMENT AND IMPROVEMENT.

In respect to the preemptors of 1854, the testimony on this subject is as follows:

Lorenz Johnson testified (p. 99):

> We built cabins on the land—shanties. Mine was made of chunks 6 feet long. It was just a little shanty. They put on brush for a roof. I did not live in the shanty. I was about two or three hours building it. The other men that went over there with me had claims like mine, the same thing. I don't know how many acres, but I suppose 160. We helped each other to build shanties—shanties all alike. We were not particular about it (p. 101). My family was living at Chisago Lake. Ogren (i. e., Andrew Swenson) was also a married man. His family lived at the same place that I lived, Chisago Lake (p. 102). I did not stay in my shanty one night. We men did not stay in the shanties over night. They had their own camp that they were living in. We didn't take turns

sleeping in each other's shanties. I don't recollect all, but I recollect so much that I never sleep in the shanty one night.

John Lonquist said (p. 110):

We went out in the woods and put up a shanty, put some kind of brush on the roof, me and three others (p. 111). I never was told how large my claim was, whether 5 acres or 160 acres, or anything. What I did there was to build this shanty. Four of us slept there one night. I guess they must be out there to build houses on a claim (p. 112). The kind of shanty was this. There was some logs and a place for one door and one window. We had some brush in the doorway, and the roof, too, we took out of the woods. We slept there one night. Then Stinson came, said he wanted us to preempt the land for him, and we started the next day for Taylors Falls.

Peter M. Peterson testified (p. 123):

We was along with all the boys; Stinson himself, too. He laid out the claims. We did not anything about the lands. We was building shanties for them other claimants, you see. This Stinson showed where to build shanties. He told the men they should build a shanty, make a *hole* for a fireplace in the middle of it. The shanties were of tamarack—spruce, something like that, anything we could get hold of, and put little spruce trees on the top for a roof. There was no door made, but they had some old rags they hung before the door. The shanty was probably 8 feet high; something

like that. I can't exactly tell. It was so long ago. After these shanties were built we came home.

Peter Norell, the defense's own witness, did not materially strengthen the case for them on this point. He said (pp. 242–243):

I went on the land there. I built me a shanty there, and cut some brush around there, building a little kind of a fence. I guess I planted a few beans there. I can't tell how long I stayed there; it is too long ago; I forget. I know I have been sleeping in the shanty; had a door and a smokehole, and had a window there, too, and I cooked and ate there (p. 243). From there we went home to Chisago Lake (p. 244). No; I have never been up there since. I have never made any claim to the land since, and never paid any taxes on it.

The above is his direct testimony. On cross-examination he said (p. 250):

I was married in the old country in 1852; came to Chisago Lake, where me and my brother lived together. He wasn't married (p. 250). My wife did not go to Superior with me. She was keeping the house there, and she continued to do so while I was gone (p. 259). The size of the shanty I built was about 10 feet square or 10 by 12. The door was where a man could get in there. There was no door to close the hole. I had a blanket for it. There was another hole for a window, but no window in there, some poles with birch bark on the roof. I guess I slept there two or three nights (p. 260).

> I built it so high I could stand up there. I am sure I slept there one night, and probably more, but I won't swear to it. I cooked potatoes and beans, fried pork, in the shanty—built the fire right on the ground in one corner. I left a hole through the poles for the smoke to go up (p. 262). I stayed on the claim three or four days.

The story of how Berg and Johnson came to him then, saying "the work was over," and the party were going "home," and what occurred on the way and after their return has already been detailed and needs no repetition, though its bearing on the question of the *bona fides* of Norell's claim as a settler should not be forgotten.

Continuing, he said (p. 266):

> I clear so I have a good chance for a shanty there, and make a little fence around it. I can't tell how large the yard was inside the fence. I don't care so much for that, either. Oh, 4 or 5 rods square; something like that. There was brush and spruce and fir trees growing there awful thick. I cut them down and pushed them out of the way, and grade up a place to build the shanty. I didn't plow any there, but I spaded up so much I could plant a little beans and a few potatoes. Probably I plant a little more than handful, probably a little less; I can't tell.

A glance at this witness's preemption proofs shows that he claimed to have gone on the land the very last of September, and, assuming he is telling the fact about

planting beans and potatoes, it is evident the planting was a mere sham and pretense. There certainly was no expectation of any harvest from a planting at that season, and no man who was not acting a part or following instructions would have done so absurd a thing.

The same may be said of the act of building a fence around a clearing of 4 or 5 rods square in a thick wood, where nothing was growing or could grow, and where a fence was not of the slightest utility.

These acts stamp the whole performance as a farce, or at least as one act in the drama of fraud, and show that the entire aim was to perform merely *colorable* acts of settlement.

Urgelle Gouge, an honest old French Canadian, still residing in Superior, came there in 1855. His testimony bears mainly upon the preemptions of that year, but by reference to the map in connection with his evidence, as found at pages 358 to 372 of the record, it will be seen that he covers also the NW. ¼ of sec. 5, T. 48, R. 13, on which Aaron Peterson made a preemption claim in 1854.

He testified that himself and three companions went all over and examined thoroughly this among other quarter sections, in December, 1855, and found not a trace of any building, clearing, or other improvement. He himself settled upon the NE. ¼ of the same section, being the quarter adjoining it upon the east, and lived there continuously for three years, during which time he used to hunt in the vicinity and became perfectly familiar with the surrounding lands, and that there

never was discovered any sign of improvement or habitation on the Peterson claim.

Lonquist, Peter M. Peterson, and Lorenz Johnson say the shanties were all alike, and the fact that all traces of this one had disappeared in one year demonstrates that the hut described by Norell, though not even that was habitable, was considerably overdrawn, and that the descriptions given by the other witnesses were more accurate and truthful. Compare now this evidence of what was actually *done* upon the claims, with the *sworn proofs filed in the land office*, to obtain the entry certificates entitling these supposed settlers to purchase the land, keeping in mind at the same time three important facts: (1) Four of the entrymen were married and had families living in Chisago County, Minn., at the time of their alleged settlements in Douglas County, Wis., viz, Lorenz Johnson and Andrew Swenson, or Ogren (see testimony of Johnson, p. 101), Peter Norell (see his testimony, pp. 249–250), and John Johnson, 2d (see testimony of Lonquist, p. 109, and preemption affidavit by John Johnson, p 63). (2) All the entrymen went home in the month of October, 1854, and none of them ever returned to their claims (see testimony of Johnson, p. 100; Lonquist, p. 112; Peterson, pp. 124–125, and Norell, p. 255). (3) Four of these 1854 preemptors did not appear at the land office to prove up until June, 1855, after they had for nearly a year abandoned the claims. They were Martin Larson, Aaron Peterson, John Johnson, 2d, and Sven Magnuson.

Here is the preemption proof of Andrew Swenson:

LAND OFFICE, *Willow River, Oct. 24, 1854.*

Andreas Svenson applied to prove his preemption to SW. ¼ of Sec. 28, T. 49, R. 14; declaration filed Oct. 24; settled Sept. 28, 1854.

I, Laurens Johnson, of Douglas County, Wis., do solemnly swear that I am acquainted with Andreas Svenson, of said county, that *he is a married man* and filed a declaration to become a citizen of the United States, that he commenced improvements and made a settlement on the southwest quarter of sec. No. twenty-eight, in township No. forty-nine, of range fourteen, on the twenty-eighth day of Sept. 1854, at that time he commenced the erection of a dwelling house which he continued working at until completed, *at which time he moved into and has continued to occupy. Said house is built of logs about 12 by 14 feet on the ground, one story high, with fireplace, etc., and is a comfortable residence.* He has also cleared a parcel of land ready for cultivation and cut a quantity of rails on said land, and I have reason to believe *he intends making additional improvements on said land.* He has not quit his residence on his own lands for the purpose of making said preemption. Nor am I in any manner interested in his procuring a title to said land.

LAURENS (his x mark) JOHNSON.

Subscribed and sworn before me this 24th day of Oct., 1854.

J. O. HENNING, *Register.*

And below are those of Peter Norell, Sven Larson, Lorenz Johnson, and John Johnson, 1st.

Proofs of Peter Norell:

LAND OFFICE, *Willow River, Oct. 24, 1854.*

Peter Norell applied to prove his right of preemption to SW. ¼ of sec. 35, T. 49, R. 14; declaration filed Oct. 24; settled Sept. 27, 1854.

I, Sven Larson, of Douglas County, Wisconsin, do solemnly swear that I am acquainted with Peter Norell, of said county, *that he is a single man* (this was false), past the age of twenty-one years, and filed a declaration to become a citizen of the United States; that he made a settlement and commenced improvements on the southwest quarter of sec. No. thirty-five, in township No. forty-nine, of range No. fourteen, on the 27th day of Sept., 1854. *That at that time he commenced the erection of a dwelling house, which he continued to work upon until completed, at which time he moved into and has continued to occupy.* Said house is built of logs one story high, is about 14 feet square on the ground, *with roof, door, window, etc., and is a good comfortable residence.* He has also cleared a piece of ground ready for cultivation and split a quantity of rails on said land, and I believe he has claimed said land in good faith *and for a home for himself.* He has not quit his residence on his own lands for the purpose of making said preemption, nor am I in any manner interested in his procuring a title to said land.

SVEN LARSON.

Subscribed and sworn before me this 24th day of October, 1854.

J. O. HENNING, *Register.*

Proofs of Sven Larson:

LAND OFFICE,
Willow River, Oct. 24, 1854.

Sven Larson applied to prove his right of preemption to NW. ¼ sec. 35, T. 49, R. 14; declaration filed Oct. 24; settled Sept. 26, 1854.

I, Peter Norell, of Douglas County, Wisconsin, do solemnly swear that I am acquainted with Sven Larson, of said county; that he is a single man past the age of twenty-one years, and filed a declaration to become a citizen of the United States; that on the twenty-sixth day of September, 1854, he made a settlement and commenced improving the northwest quarter of sec. No. thirty-five, in township No. forty-nine, of range No. fourteen; that at that time he commenced the erection of a dwelling house, and continued working upon until completed, at which time he moved into it, *and has continued to occupy until the present time.* Said house is built of logs, one story high, *about 14 by 14 feet on the ground, with door, etc., and is a good, comfortable residence.* He has also cleared a parcel of land ready for cultivation and has cut a quantity of rails on said land, *and I have reason to believe he intends making additional improvements for agricultural purposes.* He has not quit his residence on his own lands in this State for the purpose of making said preemption, nor am I in any manner interested in his procuring a title to said land.

PETER (his x mark) NORELL.

Subscribed and sworn before me this 24 day of Oct., 1854.

J. O. HENNING, *Register.*

Proofs of Lorenz Johnson:

LAND OFFICE,
Willow River, Oct. 24, 1854.

Lorenz Johnson applied to prove his preemption to NW. ¼ of sec. 33, T. 49, R. 14; declaration filed Oct. 24; settled Sept. 28, 1854.

I, Andreas Svenson, of Douglas County, Wisconsin, do solemnly swear that I am acquainted with Lorenz Johnson, of said county; *that he is a married man*, and filed a declaration to become a citizen of the United States; that on the 28th day of Sept., 1854, he settled upon and commenced improving the northwest quarter of sec. No. thirty-three, in township No. forty-nine N., of range No. fourteen W. At the time he commenced the erection of a dwelling house on said land, and continued working upon until finished, at which time he moved into and has continued to occupy. Said house is built of logs, one story *high, about 14 by 16 feet on the ground, with roof, door, window, etc., and is a good and comfortable residence.* He has also cleared a tract of ground ready for cultivation and has cut a quantity of rails on said place, *and I have reason to believe he has cleared said land in good faith for a home for himself.* He has not quit or abandoned his residence on his own land for the purpose of making said preemption, nor am I in any manner interested in his procuring a title to said land.

ANDREAS SWENSON.

Subscribed and sworn before me this 24 day of Oct., 1854.

J. O. HENNING, *Register.*

Proofs of John Johnson, No. 1:

LAND OFFICE,

Willow River, Oct. 24, 1854.

John Johnson applied to prove his preemption to northwest quarter of sec. 26, T. 49, R. 14, declaration filed Oct. 24, settled Sept. 27, 1854.

I, Andreas Svenson, of Douglas County, Wis., being sworn, depose and say that I am acquainted with John Johnson, of said county; that he is a single man past the age of twenty-one years, and filed a declaration to become a citizen of the United States; has, on the 27th day of Sept., 1854, settled and commenced improvements on the northwest quarter of sec. twenty-six, in township No. forty-nine, of range No. fourteen; at that time he commenced the erection of a house, *which he had completed and has occupied to the present time;* said house is built of logs, *about 12 by 14 feet, with door, fireplace, etc., and is a comfortable residence for himself.* He has cleared a piece of ground and cut a quantity of rails, and I have reason to believe *he intends to make additional improvements on said land for farming purposes.* He has not quit or abandoned his residence on his own lands for the purpose of making said preemption. Nor am I in any manner interested in his securing a title to said land.

ANDREAS SWENSON.

Subscribed and sworn before me this 24 day of Oct., 1854.

J. O. HENNING, *Register.*

That of John Johnson, 2d, or John Lonquist, is worthy of particular notice. Here it is:

LAND OFFICE, *Hudson, June 22, 1855.*

John Johnson, of Douglas County, Wisconsin, applied to prove his rights of preemption to NW. ¼ sec. one, T. 48, R. 14; settled 26th Sept., 1854; filed Oct. 24, 1854.

I, John Johnson, of Douglas County, Wisconsin, do solemnly swear that I am acquainted with John Johnson, of said county and State, *that he is a married man* and a citizen of the United States; that on the 26th day of Sept., 1854, he made a settlement and commenced improving the NW. ¼ of sec. one, township 48, range 14. At that time he commenced the erection of a dwelling house on said land, *which he completed about the 10th day of Oct., 1854, at which time he moved into it and has made his home and continued to occupy;* said house is about 14 by 14 feet on the ground, built of logs, one story high, *with roof, door, window, and chimney, and is a good comfortable residence for himself and family.* He has also cleared some *two acres or more of timbered land ready for cultivation,* and split a quantity of rails on said land, and I believe he intends making additional improvements on said land for agricultural purposes. He has not quit or abandoned his residence on his own lands in this State for the purpose of making said preemption, neither am I in any manner interested in his procuring a title to said land.

JOHN (his x mark) JOHNSON.

Subscribed and sworn before me this 22 day of June, 1855.

J. O. HENNING, *Register.*

This affidavit was made by John Johnson, 1st, the agent of Stinson. He knew that John Johnson, 2d, had been away from the claim for over nine months, and that his family had never been upon it or within the State of Wisconsin. He had been sent out personally to get Lonquist and bring him down to the land office. He had not the excuse that some of the other affiants had, of not understanding English. But when he swore that the claimant moved into the house on his claim on October 10, 1854, and had since continued to occupy it, and made it his home, that it had a door, window, and chimney, and was a comfortable residence for said claimant and his family, he wilfully lied and perjured himself for his employer.

The proofs of Martin Larson, Aaron Peterson, and Swen Magnuson are lost, and could not be produced, but they must necessarily have been similar in form and showed an apparent *present residence* on the land and improvements of a permanent character, because these the law and rules of the land office required.

Moreover, each was required to swear, and did swear (notwithstanding he had not been within 100 miles of the land for nearly a year), *that he had settled upon the same in good faith to appropriate it to his own exclusive use.*

We know not what argument the able counsel for appellees can advance in support of these four entries. None whatever was presented at the hearing, and we can conceive of none. It would seem that their invalidity must be conceded.

As to the other claims, the argument of the defense is twofold.

First. Counsel say the acts performed by the preemptors were a sufficient compliance with the law, that the statute did not prescribe any length of time the preemptor should stay on the land; neither did it specify what sort of a house he should build upon it, or what other improvements he should make; consequently, any occupancy of the land and any sort of a house answers the letter of the act and creates a valid preemption.

We desire to call attention at this point to the finding of the trial court that the character of the improvements was known to the land office officials. That this was wholly without foundation may be easily understood when we take into consideration that the land was 150 miles distant through an almost unbroken and trackless wilderness from the land office, where the lands were entered. It is also contended by counsel below that the lands in question were covered with tamarack and spruce, the soil spongy red clay, saturated with water, and unfit for agricultural use or habitation, and that it was absurd on the part of complainant to place them under the preemption law, and served to put a premium upon fraud. Assuming the facts to be as stated, the conclusion drawn by counsel there is exactly the opposite of the true one. The more unsuitable the lands, the stronger becomes the presumption against the good faith of the settler and the more necessary it was that clear proofs, truthful in character, should be made. The sale of public lands is

within the control of Congress and the President, and they can not be expected to know the character of all the lands in the public domain.

PROOFS AS TO PREEMPTIONS IN 1855.

Israel Johnson, one of the preemptors of that year, testified (pp. 90–97):

> I am a native of Sweden and came to the United States in 1854. It would be pretty hard telling who first spoke to me about preempting land in Douglas County, Wis. I guess Mr. Stinson and John Johnson. They spoke to me on the road between my home and Taylors Falls. They were in a wagon, I think. They were together. They offered me so much to preempt land for them; that is all I recollect of what was said. Their offer was, if I would go up there and preempt land they pay me $30 a month and some for my claim beside. I say I should go, and I did go. Some is dead that went with me, Wallmark and his brother, Swen Peterson, Gustav Vieborg, August Johnson, and another fellow, his name is Westling; that is all I recollect. We took one claim apiece. We went up together and down together. I built a little shanty there. I don't know what claim it was. I couldn't read English, and he put my name to what he had a mind to. John Johnson showed me what claim to take up. The way we know where to go, we had this Johnson to lead us and show us the land. They said we should follow him when I talked with him and Stinson on the road. I was to have nothing else to do with it. And I did follow

him. He showed us where we should work, those along in the company. I cleared a little place and built a little shanty, nothing more. I stayed in it a single night. Then I went to another place and worked there. We worked on one claim, and moved on to another and helped each other put up the houses. After that I went home, right back.

We stayed home one day and went over to Hudson the next day, and made out papers, the whole company. John Johnson was with us the whole time. We was in office, like here, but I don't know who made the papers out. I signed papers there. I guess the others did, too. I paid no money. Somebody, I suppose Stinson or Johnson, paid the money; I couldn't tell. I know I got some money. I signed a form of deed, but I could not read English and don't know what I did sign. I understood it was a deed to Stinson. All these men that went up to Douglas County with me did the same as I did on their claims. The money I was to get was paid to me at Hudson when I signed the papers. I did not pay for the land. I can't tell just how much I got, but it was $30 a month and so much for the preemption.

After this witness had been examined, cross-examined, and excused, and after an intermission had been taken for dinner, he was recalled by the defense for further cross-examination, and stated that he thought he was mistaken about John Johnson going up to Superior with them. Being asked to explain, he said that Otto Wallmark and one Gustav Johnson came to him during the intermission and said he was wrong and that he now

thought it was Vieborg that showed them the road (it is understood Vieborg was known then as Gustav Johnson and was one of the preemptors); but that he was even now not sure John Johnson was not with them, and only *said he was mistaken* because Wallmark, who was one of the party, said so.

We call attention to the fact that Wallmark himself, who was a witness for the defense, testified there were *six* Swedes in the party, the name of one of whom he had forgotten (pp. 208, 209), and to the further fact that John Johnson was certainly with them when they proved up on June 22, 1855, the same as with the band of 1854, as furnishing strong presumptive evidence that the witness was correct in his first statement and Wallmark in error. However this may be, the statement stands unshaken that John Johnson and Stinson hired him to preempt land, and if some other Johnson took charge of the party it is not of special importance. Whoever the pilot was, he was evidently competent and trusty, as he brought the vessel and cargo safely into port, and Stinson got what he bargained for.

We reserve comment upon Wallmark's interference until we take up his evidence later.

Moses S. Gibson, the same man who was hunted up by Stinson in the fall of 1854, and brought back from St. Croix Lake to take the acknowledgements of deeds of the preemptors in the first party, identified the declaratory statements, preemption proofs, and preemption affidavits of this second party, all bearing date

June 22, 1855, as in his handwriting, and says he was employed and paid for the work, as before, by Stinson. The deeds from the entire party to Stinson bear date the same day, and all are acknowledged before this witness.

Note that they each claimed to have begun their settlement on June 11, 1855, just eleven days before the entry, showing that Israel Johnson's story of what was done up there must be substantially correct.

John S. Moffatt, who was in 1855 a clerk in the register's office at Hudson, testified (pp. 133–139) that in the year 1855 he saw James Stinson at the office with a number of Swedes; that Stinson was in the office while the preemption proofs were being made out; that then the whole party went down to the receiver's office, and after their return to the office where witness was he saw Stinson handing the men something which he supposed to be money, and that this happened on two different occasions in that year. (N. B.—Some of the entries by 1854 preemptors were made June 1, 1855, and all of the party that went up in 1855 with two of the previous year were made June 22, 1855.) He stated further that there were other papers made out at the time and acknowledged before Mr. Gibson, which he understood to be deeds to Stinson, and that this circumstance was so unusual that it enabled him to remember the incident. He recollected the name of Wallmark and Johnson, but was not certain of any others.

John Lonquist, who was of the party which went up in 1854, but who proved up on June 22, 1855, under name of John Johnson, corroborates Moffatt as to Stinson being in the office while the proofs were being made and adds the interesting fact that when he arrived at the land office Stinson was outside talking with the Wallmarks, and that they all went in together.

Ambrose B. Burbank, of New York City, testified (pp. 80–87), that he was at Superior in 1855, and that in the month of July of that year (only a month after this band of Swedes claimed to have settled on the lands preempted by them) he went all over lots 1, 2, and 3, in section 1, T. 48, R. 14, the claim of Gustav Johnson, and found nothing upon it worthy the name of improvements, only a few poles thrown together, which would not take a man more than two or three hours to do; that he went on the land himself and made valuable improvements and continued there three years, during which he never saw Johnson nor could he find anyone who had ever known such a man in that locality; that for some reason which he could not understand, but which he assigned to collusion between Stinson and a Mr. Dean, then a United States land officer, he never was allowed to prove up on the claim; that at one time while hoeing potatoes on his claim he was visited by James Stinson and his father, and later received a proposition from a third party claiming to be an agent of Stinson, offering him $1,500 to sell out or abandon his claim; that having become disgusted with the action of the

land officials he accepted the proposal, received an obligation from Stinson for $1,500, to be paid when a patent was obtained for the land; that he went back to New York and after the war surrendered this obligation on receipt of $500, paid by Stinson's check on a New York City bank.

Urgelle Gouge, whose testimony has already been alluded to, in December, 1855, examined, besides the claim of Aaron Peterson preempted in 1854, the N. E. ¼ of section 5, preempted by Israel Johnson; the NW. ¼ of section 4, preempted by Andrew Wallmark; and the NE. ¼ of section 4, preempted by Ola Westerland. He had three companions with him and they went all over the four quarter sections, taking several days for it, and examined them thoroughly. The only visible trace of improvement found on any of the claims (though only six months had elapsed since the proofs were filed showing good comfortable houses erected on each) was a hut such as a hunter might build for the purpose of concealment, standing on the Westerland claim. It was about 8 feet square, 3 or 4 feet high, made of logs not matched or fitted, but laid upon each other with cracks open, and three or four poles on the roof covered with brush. Mr. Gouge says it was not fit to live in, no more shelter in fact than it was outside. There was no sign of any clearing on any of the quarter sections. They were looking for land to locate upon, and had no occasion to take occupied land, as there was plenty of vacant land in the vicinity. Finding these parcels vacant and unimproved, they each

settled on one, erected good houses and lived there for several years. Like Burbank, they found difficulty in proving up, but they did not fare so well as he. One day in the absence of the occupants at their work, all four houses were mysteriously destroyed by fire, and they became discouraged and abandoned the claims.

The foregoing is the evidence for the Government. For the defense but one witness was sworn, a statement of whose testimony follows:

Otto Wallmark, one of the preemptors, gives as the reason why he went to Superior that the Swedish consul in Chicago had recommended the place as one where there was plenty of work, and which was likely to be quite a town (p. 207). This was the year previous, and he decided at the time to go to Minnesota. But the land in Minnesota was poor, and so he determined to go up to Superior, where plenty of work was to be had, at good wages, and he could live on his land and improve it while at the same time earning money (p. 219).

These reasons are evidently given to forestall any suspicion that he was *hired* to go to Superior. As to their honesty, let his conduct be the test.

He says his party went up with a view to enter land *if they found it as good as they expected* (p. 210). Yet there was no deliberation in the selection of the land. He claims they had a map and that as soon as they came in sight of the lake they struck a camp, looked around for a township corner, and entered at once upon their claims.

We submit that is a most improbable story. Here was a band of recent emigrants from Sweden in a country absolutely unknown to them, more than 150 miles from home in a dense forest, and without going into the town, or making any inquiry as to where the best lands were to be found, or taking any time to look around, the witness would have us believe that after having come all that way to find homes and work they settled at once on coming in sight of their destination upon the lands nearest at hand. Such a story *can not be true*, but the statement of Israel Johnson that Stinson had furnished them a leader and guide who pointed out the lands they were to preempt is the only reasonable explanation of their conduct.

Having entered upon their claims, Wallmark says they each proceeded to clear a little piece of land, build a shanty, put a little fence around it, and "hoe in corn and potatoes" (p. 211); they acted always as a party; shifted about in the matter of sleeping; all made improvements alike; as he tersely expresses it, "we didn't do anything separate" (p. 221). He says the shanty wasn't very big, 8 by 6, or something like that, with a roof of poles, and openings cut for a door and window (p. 221). He had in mind that it was *temporary merely*, and *did not intend to do any more than was required to get his entry* (pp. 222–224). He ran a little fence around his clearing, not because any was needed, but because he thought it was *required* (p. 225). The others of the party made improvements of the same character, little log houses with door and

window openings and size about the same, no doors in the openings, no sash in the windows (p. 224).

Note now what this witness swore to at the time in support of his neighbor, Gustav Johnson's preemption on lots 1, 2, and 3, section 1 (affidavit at page 48 of record), namely, that said Gustav Johnson *moved into* the house about June 1, and has continued to occupy it till the present time; that it was *14 by 14 feet on the ground*, with *roof, chimney, door, and a comfortable residence* for himself; also that he had *cleared two acres* of land ready for cultivation. And remember at the same time that this is the *identical claim* on which the witness Burbank settled about *July 1 of the same year*, and found exactly such a hut as Israel Johnson described and no clearing or other vestige of improvement. His own present statement and the evidence of Burbank and Gouge show that he did not scruple to impose upon the Government by a grossly deceptive and fraudulent affidavit. Having since attained some prominence among his countrymen it is not surprising that he should want to defeat this action, the success of which would discredit him, and that we find him appearing as a witness for the defense, and that we also find him an interested participant and interpreter on the two occasions when Lorenz Johnson has been examined regarding these preemptions, and again a hanger-on and interfering at the examination of Israel Johnson, trying to induce him to retract a statement in his testimony.

Wallmark further says that he was not disappointed in the object of his trip; that his claim was a good

one and he was entirely satisfied with it; that work was plenty there and wages good (pp. 223 and 230), yet though he claimed these were the very things he and his companions came so far to seek, they *did no work whatever there* (p. 220), but after spending at the outside three or four days on their claims (he *says* two or three weeks, p. 211, but as the preemption proofs give date of settlement as June 11, and proofs were sworn to in Hudson, June 22, and he had spent a day or two at home in Chisago on the way down, p. 211, it is readily seen that this was impossible), as soon as these imaginary houses were completed they turned their backs on Superior and have never visited it since. Indeed, so secret and silent was their passing that as shown by Burbank and Gouge, they were *not even known to have been there.*

Wallmark declares that he had not seen or heard of Stinson until after he had entered his land, which he claims to have paid for with his own money, and which, with painful disingenuousness, he says, in his direct examination (p. 213), he sold "sometime after," he didn't know how long, to Stinson, admitting, however, on cross-examination, that it was *on the same day and right there in Hudson, near the land office* (p. 227).

Compare with this the testimony of Lonquist, that he found Wallmark and Stinson talking together outside the land office when he arrived, and that they all went in together and were sworn; the testimony of Moffatt that Stinson came in with the men and remained while the proofs were being made out, that

they all went together to the receiver's office, and coming back signed what he supposed to be deeds, and received money from Stinson; and the testimony of Gibson, admitted by Stinson, that he was hired and paid by Stinson to make out both the preemption proofs and deeds, and the conclusion is inevitable that this witness is dissembling.

He was obliged to swear in his preemption affidavit that he had not settled on it to sell on speculation, but to appropriate it to his own exclusive use, and in his testimony he protested more than once that he intended to return and make *real* improvements upon the land, yet he admits that almost before the ink was dry upon his signature to that oath he conveyed to Stinson this home he had traveled so far and spent probably a month of time to obtain, at an advance of less than $100 over the Government price, *and without knowing or making any inquiry as to its value* (p. 229).

He says he received "about $100." His claim embraced 148.78 acres, which would cost him about $178.50. The deed to Stinson states the consideration as $270, which is an advance of $91.50, a mere pittance in comparison with the advantages he had secured. It is also an admitted fact that he went back to Chisago County and has always since resided there, yet the land was *just as poor* as when he left the region to avail himself of the superior advantages of Douglas County, and land and work were still plenty and wages good in Superior, where he claims his expectations had been realized. The fact is, the story of this witness is improbable throughout; his conduct is utterly at vari-

ance with his protestations, and his testimony, in so far as he disputes the charges in the bill of complaint, is opposed, discredited, and overwhelmingly refuted by that of the *six* witnesses, Israel Johnson, Burbank, Gouge, Moffatt, Gibson, and Lonquist.

Right here we may as well refer to the claim made that Lorenz Johnson, who testified for the Government in respect to the preemptions of 1854, had made inconsistent statements in his deposition, taken in 1893, in a certain action pending in the United States circuit court for the western district of Wisconsin, wherein one Gagnelius, grantee of Andrew Swenson, was plaintiff and James Stinson was defendant. The action was ejectment for the quarter section preempted by Swenson. The pleadings are in the record. It has never been brought to trial. Counsel for both parties in that action are counsel for Stinson in this litigation. It will be seen that what Lorenz Johnson did in the matter of his own preemption was utterly foreign to that controversy, but evidently counsel saw in it a good opportunity to examine this illiterate Swede, in the absence of counsel for the United States. It will be observed upon perusal of the deposition, found at pages 340–342 of the record, that *not a single question material to the case in which he was called as a witness* was asked him, because the only issue could be whether Gagnelius or Stinson had the better title from Swenson. The linguistic capacity of the witness may be judged by the fact that although he had then been forty years in this country he had not yet learned to converse in English. The interpreter was this same

Otto Wallmark, whose conduct and testimony we have just been considering and whose reasons for wanting this fraud covered up we have already adverted to. When the witness was allowed, on direct examination, to tell his own story in his own way, he stated that he *had always lived in Chisago County* since he came to this country, and that in 1854 he went up to Superior to work by the month, and that after the party had worked awhile clearing the streets *Stinson took them out one at a time on the land*, and that he took land with the rest. He was not asked to state who hired him or what was said to him, and when he had gone thus far his direct examination was cut short. Then the astute counsel for Stinson took him in hand, and here is where the alleged inconsistent statements are found. The deposition does not give question and answer, but is taken in narrative form. It was said, however, that the substance of the examination on pp. 341–342, on which counsel rely to contradict this witness, *was contained in the questions* and that the answers were a simple *affirmative or negative*. Thus the questions would be: "If the paper you signed at the land office stated that you never had made any other preemption," etc. "If it was contained in the paper that you did not enter upon the land to sell it on speculation," etc. "If the paper stated that you had not prior to that time, directly or indirectly, made any agreement or contract, in any way or manner, with any person whatsoever, by which the title you might acquire from the United States should inure in whole or in part for the benefit

of any person except yourself"—*was it true?* and the answer was merely "Yes." Then the substance of the same questions would be repeated in the direct form, and the answers were simply "No."

It is evident the force of the answers depends entirely on the witness's understanding of these involved questions, dealing, as they do, with abstruse subjects and unfamiliar ideas and words, and that again depends on his intellectual keenness and the ability and trustworthiness of the interpreter. Counsel, in their effort to prove that the testimony as to conversations between Stinson and the preemptors was unreliable because held through an interpreter, asserted that a single word misinterpreted might change the entire meaning of what was said. We have shown the reasons why this argument did not apply to those conversations. But here the case is different. The interpreter was one of the participants in the alleged frauds. He is now a man of position and doubly interested in covering them up, and it is not strange that his answers seem inconsistent with his present testimony *which is a simple recital of what was said to him and what he did.* Who knows how Wallmark interpreted these things to him, or what suggestions he made to the witness as to his answers? When Lorenz Johnson was examined as a witness in the case at bar, he was questioned about this previous deposition given by him, and the interpreter originally sworn *found it impossible to make him comprehend*, and particularly the question about the preemption title inuring to the

benefit of another, and a new interpreter had to be called in. He then stated that he did not understand he had testified, as claimed on the former occasion, and explained, that *he had not preempted the land to sell on speculation, but for a month's wages.* We submit there is no substance to the alleged impeaching testimony.

To sum up the evidence in respect to the 1855 preemption, we have the *positive testimony of one witness*, Israel Johnson, that Stinson personally hired him to preempt land; that he joined a *party* having a leader whose directions he was to follow, and this leader, we believe as he first stated, the same John Johnson who hired and controlled the party of 1854 preemptors; that this leader showed each man where to locate and instructed him what to do; that the witness performed his contract, conveyed the land to Stinson as soon as entered, and received the promised stipend. *It also appears by the undisputed testimony* that this party which he joined *acted as a unit* in all things, as if having a *common purpose*; that they entered upon the land preempted without deliberation or inquiry, as asserted by Israel Johnson; that they made merely temporary and colorable improvements, of like character with those made in 1854, and which had wholly disappeared in most cases within six months; that these improvements were in no sense a compliance with the law, and were grossly misrepresented in the preemption proofs presented at the land office; that as soon as these perfunctory acts were done, without having been

a week in the country, without doing a thing there in the line of their work or occupation, in short, without performing a single act indicative of a permanent settler, not Israel Johnson alone, but the *entire party*, acting still in concert, turned about and went back to Minnesota and were never again seen in Douglas County. Their whole conduct was characteristic of men performing a contract, carrying out the orders of a superior, acting a part in a preconcerted scheme or enterprise.

Then at the land office we find them acting together, meeting on the same date, witnessing for each other and accompanied still by appellee's steersman, John Johnson, Stinson, whose interests were in Superior and whose home in St. Paul, who had not personally seen these men in Superior, nor been in their company, by something more than a coincidence meeting with them there, *at the very time we would naturally expect the principal to appear*, associating familiarly with them at the land office, employing a conveyancer to make their proofs, and himself paying for the service, going with them to the receiver's department and advancing the money for at least part of them to pay for the land, and finally the consummation of the deal, by the immediate conveyance of the land to Stinson.

It is said there is no *direct evidence* of the hiring of any of these men, except Israel Johnson, but it must be remembered that in cases of fraud, combination, or conspiracy it is seldom that direct evidence is procurable; the combination must nearly always be shown

by circumstances, by proof of concerted *action*, and here these are so numerous, unequivocal, and strong that the conclusion unerringly follows.

Again, it is said there are others of the preemptors of 1855 still living, and as the Government has not seen fit to examine all accessible witnesses, the presumption is against the complainant upon this charge that the preemptions were made under contract, and the case of *United States* v. *Budd* (144 U. S., 155) is cited in support of the proposition.

We respectfully submit that no such presumption is warranted, and the case cited does not support it. In the Budd case the court say, "*No witness ever knew or heard of any agreement.*" Then Budd and Montgomery, the two persons charged with making the prior agreement were both parties defendant, and both answered under oath denying the truth of the charge. It was claimed that because neither of them appeared as a witness, and because *they* failed to call White and Rockwell, the witnesses to the preemption applications, and the notary who took the acknowledgments of the deeds, therefore the presumption was *against the defendants* because they had failed to fully disclose all the facts within their knowledge. The court said:

> *As no wrong is charged against the three latter* (referring to White and Rockwell and the notary), if the Government, the complaining party, failed to call them, it is to be presumed that upon inquiry it found they knew nothing which would tend to substantiate the claim. As to the two defendants, they having once sworn

> there was no agreement, there was nothing further to disclose. If the Government doubted their statements under oath, it could have called either one and cross-examined him to its satisfaction.

It will thus be seen that all this case *held* was that no presumption arose *against the defense* for not calling witnesses which the complainant could call *with equal propriety*, nor because they did not offer themselves as witnesses when they had made sworn answers which were evidence, and the complainant had not seen fit to cross-examine them.

The case certainly did not hold, nor would it be just to hold, that an unfavorable presumption should be drawn from the fact that the United States failed to call *all of the alleged participants in the fraud* to prove its case. These men not being parties to the action, the United States by calling them would have vouched for their credibility, and the natural presumption is that a man who has once assisted in a fraudulent scheme will not tell of it or help to defeat it. The United States would have been foolish to call them, unless it had proof in advance of their repentance and willingness to tell the truth.

The complainant gave evidence as to the kind of house found on Ole Westerland's claim by Urgelle Gouge, also of the condition of Gustav Johnson's claim by A. B. Burbank. Mr. Sanborn, counsel for defendants, on his cross-examination of Judge Shaleen (p. 352) showed that for three years past Andrew Wallmark's hearing, sight, and memory had been impaired, which explains

the failure to call him as a witness, but the same counsel called the judge's attention to a number of affidavits attached to that of Peter Norell and furnished to the Government by one Streeter in 1887 (p. 352), among which he identified one by Andrew Wallmark (p. 353), and it may be inferred he had given testimony therein not unfavorable to the Government. It may be stated here that the Government, with unusual courtesy, furnished a copy of these affidavits to the counsel for defense early in this litigation.

The defense could have called all of the competent living preemptors, and as they were alleged to be the *active agents* in the fraud, and acting in collusion with and under the control of Stinson, the United States *could not* be expected to do so. As defendants did not see fit to call them, *there is a presumption* that they could not contradict the testimony given by the witnesses for the complainant or that the defense were afraid of what they might disclose on cross-examination, and this is plainly implied in the opinion in the Budd case. Naturally they would be friendly toward Stinson, and hostile to the other side, hence the presumption, such as it is, is against the former.

If the evidence of a preexisting agreement is not as direct and positive in the case of these 1855 preemptors as in the case of those who went up in 1854, we submit it is sufficiently clear and convincing to answer every requirement of equity, while the proof of bad faith in the matter of "settlement and improvement" is *absolutely conclusive.*

It is urged that the preemptors have had the benefit of their preemptions, and that Stinson paid all the land was worth, therefore the patent should be permitted to stand. We say in reply:

(1) The very essence of the action is that the preemptors were never *entitled* to the preemptions, which the law reserved to *bona fide* settlers on the public lands and to those only. It might as well be said that because a "fence" has paid the thief a reasonable price for his booty, both should go scot free, and the owner should not have his own.

(2) It is not true that there was no speculation in these investments for Stinson. James Bardon, who has been in the country since 1857, testifies that during the entire period from that time down to 1881 the lands were worth from $5 to $25 per acre, depending on location. The least valuable were therefore worth $800 per quarter section, and as the highest consideration stated in any of the deeds is $270, there is seen to be a very fair profit in these deals. If it were not so, we may be sure Stinson would not have exhibited the eagerness, and taken the trouble to get them, which the evidence shows he did. Again, it may fairly be inferred, and in fact the evidence justifies the belief, that the consideration stated in the deeds covers *all* the money paid the men, including that paid for time employed in the city work at Superior, for which he was doubtless reimbursed in part by his associates. Stinson claimed to be acting as agent for them in hiring these men and for his father in buying the land. If so,

he must have made reports to his principals and they must have a record of the sums expended. As he failed to produce this evidence, the presumption is the men told the truth, and that they never received the sums stated in the deeds exclusive of the wages promised them and part of which they earned by street work.

(3) Even if James Stinson paid full value for the land, that would not justify his getting it by fraudulent means, and is therefore entirely aside from the question. The law declares that the title so obtained shall be void and the money paid for it forfeited. The argument is an appeal to the court to set aside the law, and nothing else, and this, it is safe to presume, the court will not do.

Again, it is said the United States had knowledge of the alleged frauds as early as 1856, in proof of which the defense call attention to certain notices of contests published in the local papers at Superior and certain letters written by Hiram Hayes to the General Land Office, for which reason also they say relief should be denied.

(1) These publications are not notice to the United States, nor is there any proof that one of them was ever filed in the Land Department or seen by a Government official.

(2) The patents were most of them issued before these notices were published, and after patent issued, the Department has no jurisdiction and can afford no remedy. It is not claimed that any hearing was ever had on any of the contests or any evidence of fraud

presented. Burbank was bought off, Castro killed in a duel, the other contestants were burned out and disheartened, and Hayes says that as soon as he learned that patents were issued he dropped the matter. The United States Land Department which is a mere administrator of the law, might well suppose that if the contestants abandoned their claims they were unfounded.

(3) Neither the published notices nor the letters of Hayes gave information as to the grounds upon which the claims were contested, except that one letter charges that some of the preemptors had previously exercised the preemption right in Minnesota. To this the Commissioner replied that the land in Minnesota was open to private entry, and that a filing of preemption application on such lands, was no bar to a second filing on unoffered lands. No other specific fraud is referred to, and this proved to be in fact no fraud. It is elementary that notice to bar one of relief must be of the particular fraud charged, even in the case of a private individual. And there is no evidence that any official of the Government prior to 1885 had knowledge that it was claimed that these preemptors had been hired by Stinson or that they were not actually living on the land.

(4) Even if the Government officials had notice of the precise frauds here charged, it would be no defense to the actions. Cases have not been infrequent where the land officers were *in collusion* with parties engaged in defrauding the Government; and even if perfectly

honest they are not apt to take the initiative or to follow up a prosecution which has no private interest back of it to spur them on. For these reasons, it has become a well-settled rule that laches and limitations can not be pleaded against the United States in its sovereign capacity, and the authorities to that effect will be found collated in this brief.

(5) It is shown by the proofs that the judicial department of the Government, which alone had the power to enforce a remedy against the fraudulent grantees of these lands, was first notified of the frauds set forth in the bill of complaint through a report of Special Agent Eaton made to the Commissioner of the General Land Office and by him transmitted to the Attorney-General in 1885.

PRIOR AGREEMENT TO CONVEY PREEMPTION CLAIM RENDERS PATENT VOID.

Section 2262, Revised Statutes, is as follows:

> SEC. 2262. Before any person claiming the benefit of this chapter is allowed to enter lands, he shall make oath before the receiver or register of the land district in which the land is situated that he has never had the benefit of any right of preemption under section twenty-two hundred and fifty-nine; that he is not the owner of three hundred and twenty acres of land in any State or Territory; that he has not settled upon and improved such land to sell the same on speculation, but in good faith to appropriate it to his own exclusive use; and that he has not, directly or indirectly, made

any agreement or contract, in any way or manner, with any person whatsoever, by which the title which he might acquire from the Government of the United States should inure in whole or in part to the benefit of any person except himself; and if any person taking such oath swears falsely in the premises, he shall forfeit the money which he may have paid for such land, and all right and title to the same; and any grant or conveyance which he may have made, except in the hands of bona fide purchasers for a valuable consideration, shall be null and void, except as provided in section twenty-two hundred and eighty-eight. And it shall be the duty of the officer administering such oath to file a certificate thereof in the public land office of such district, and to transmit a duplicate copy to the General Land Office, either of which shall be good and sufficient evidence that such oath was administered according to law.

NOT NECESSARY TO REFUND MONEY OR OFFER TO REFUND MONEY.

Inasmuch as section 2262, Revised Statutes, provides that any person swearing falsely to procure a patent shall forfeit money paid by him for the land, the United States need not offer to refund the money when it brings an action to vacate the patent on that ground.

United States v. *Minor*, 114 U. S., 233.
Cooke v. *Blakeley*, 50 Pac., 981.
United States v. *Trinidad Coal and Coking Co.*, 137 U. S., 161 (34 L. Ed., 640).

TAXES.

It is a well-settled rule that public lands of the United States are not subject to taxation. The fact that a person may have procured a conveyance of the legal title from the Government, whether by mistake, fraud, or false swearing, does not alter the rule. The title so obtained, in the eye of the law, is held by the fraudulent grantee *in trust for the grantor*—that is, the United States. In other words, it is still in fact, not only as between the parties but as to all the world excepting bona fide purchasers, the property of the United States, and as such must continue exempt from taxation.

Van Brooklin v. *Anderson*, 117 U. S., 151.
Wisconsin Central R. R. Co. v. *Price County*, 133 U. S., 496.
Northern Pacific R. R. Co. v. *Rockne*, 115 U. S., 600.
Central Pacific R. R. Co. v. *Nevada*, 162 U. S., 512.
Hussman v. *Durham*, 165 U. S., 144 (41 L. Ed., 664).

Original entry canceled. Land held exempt till valid entry made. (*Campbell* v. *Wade*, 132 U. S., 34.)

STATUS OF LAND AFTER PATENT VACATED.

The land included within the alleged fraudulent entries, being situate within the corporate limits of the city of Superior, is not now subject to preemption or homestead entry, but in case the patents shall be set aside it will be subject to sale upon such

terms and under such regulations as Congress may see fit to prescribe.

Upon this point we quote section 2258, Revised Statutes:

> SEC. 2258. The following classes of lands, unless otherwise specially provided for by law, shall not be subject to the rights of preemption, to wit:
>
> First. Lands included in any reservation by any treaty, law, or proclamation of the President, for any purpose.
>
> Second. Lands included within the limits of any incorporated town, or selected as the site of a city or town..
>
> Third. Lands actually settled and occupied for purposes of trade and business, and not for agriculture.
>
> Fourth. Lands on which are situated any known salines or mines.

See also statute relating to sale of town sites, section 2380 et seq., Revised Statutes.

The answer states that this suit was instituted in the interest of parties who desired to obtain the land through the Government by preemption if the patents are set aside, and who are charged to have filed claims upon it. There is nothing in this claim.

LACHES AS A DEFENSE.

During the period of time involved in the subject-matter of this case the management, control, and sale of the public lands have of necessity been of a constantly changing character. Its legal department, in

its relations to the other departments, as well as in its organization and evolution, has been equally changing, and it would be idle to attempt to say that the United States could be held to rules, either in law or equity, which would be proper in the case of individual litigants, copartnerships, or private corporations. The fact that there has been no statute of limitations running against the Government until a recent period, and that the courts have almost uniformly refused to apply rules relating to *notice* to the Government, so as to hold it responsible for laches, is apparent from a large number of cases. If it were otherwise, notice brought to officials of any department of the Government might be binding upon the heads of an entirely different department, thousands of miles distant and beyond any reasonable reach.

It is well known that contests over preemption and homestead entries between rival settlers or speculators were of the most common character all over the United States, and are to this day. Where a party sought to contest the entry of another party with intent to obtain the land for himself, it was necessary to make some sort of showing of good faith in so doing by means of affidavits. That was all that was done here, and there was nothing in that showing, as indicated by this record, to justify defendants' sweeping and general charge, inferentially applicable to this whole fraud, that the Commissioner of the General Land Office was informed of the same, relating to these preemptions soon after they were made, but deliberately chose to wait until

most of the witnesses were dead and the memory of the living had failed. It would scarcely be possible to adopt language more directly contrary to the real facts in this case. Nor is the claim made by defendant's counsel, that most of the witnesses are dead and that the memory of the living has failed, less in accord with the facts in this case.

The delay was not great or unreasonable. The fraud was discovered in 1885, as disclosed by this record. Suit was begun in 1887, within two years of the discovery. The record shows that the subject was meanwhile being carefully investigated with a view to ascertain whether, after the lapse of so long a time before the discovery of the fraud, proof could be clearly and reliably made. The only witness of any particular moment who had died was John Johnson, and he had passed away within about two years of the commission of the fraud, so that if the same had been discovered almost immediately upon its perpetration, and had been acted upon, his testimony could not have been saved to the defendant. Can it be for that reason that the Government would have no redress? True, as they claim, the register and receiver of the land office at the time of the occurrence had died, but their records and files are here in this case, and common knowledge of the land office and of land office proceedings would satisfy any court that they merely gave attention to and made files and records of their enormous business from day to day. Those files and records are clear, unmistakable, beyond the chance

of dispute, and in evidence in this case. What rule of the law will, under such circumstances, presume the loss of papers, and why can not a court be reasonably clear as to the reliability of the evidence?

In their brief below, defendants quote from the somewhat sweeping but eloquent language of Judge Black in the Reside matter. That party had extensive dealings with the Post-Office Department of the Government at a time when the latter was impecunious and in sore stress for means to carry on its business. The series of transactions in which the two were involved had been submitted to a court and jury and had been determined by them in the form of a judgment in favor of Reside. Congress had passed an act expressly recognizing the validity of that judgment and ordering its payment. Then the Secretary of the Treasury presumed to set off old balances—the same matters that had been in dispute and had been settled in the litigation which had ended in the judgment before mentioned—as against the claim of Reside's heirs for the payment Congress had ordered In other words, the Secretary of the Treasury, by an arbitrary proceeding, was seeking to upset the action of a jury, a court, and Congress, the latter of which had absolute control over the subject. He was seeking to open a matter which had become *res judicata;* to deny to a man's legal representatives their day in court; to constitute himself court and jury; and to summarily interpose his authority as final and decisive in favor of old balances struck against the other

party by persons who had passed out of the office and were dead, and against the heirs of a man who was also dead. It would be difficult to imagine a case that would more thoroughly arouse the opposition of a learned and fair-minded man like Attorney-General Black than the facts in this Reside matter. Had he been rendering an opinion upon the circumstances of a case like this, where an alien had entered the boundaries of the United States and by hoodwinking and deceiving had deliberately set the laws at defiance, had violated every one of them, and had obtained a good record title to lands which belonged to the United States and for which it had received no penny of compensation and no other consideration whatever. The alien was still living and in possession of all of his faculties and of the property he had thus secured by fraud, and in the enjoyment and prospective further enjoyment of that property within the boundaries of a great and growing city, to the exclusion, perhaps, of thousands of people who might have found homes thereon—people innocent of fraud and who were loyal and law-abiding citizens of the United States—it is not unlikely that his opinion would have been other than that quoted by the learned counsel.

But the case of *The People* v. *Clark* (10 Barb., 120) is even less happy for defendants. A moment's analysis of that quotation is sufficient. Clark, while lieutenant-governor of New York, under the British Crown, it was claimed, became interested, among

others, in a grant of certain lands from the Crown. One hundred and ten years afterwards it was sought to overturn the grant, although other persons had long since become the owners. But it appeared that, even if Clark was interested, the grant reserved to the Crown the usual rents and profits required in such cases from the grantee. In other words, if Clark had been interested he had submitted to a like payment as the other parties interested, or as other persons in like cases. The Crown was not, therefore, in any possible sense defrauded. The King had passed away, the colonial council had passed away from New York, and Clark had long been gathered to his fathers; in fact, no one connected with the transaction could have been dead less than fifty years, and innocent holders of the land in good faith were sought to be dispossessed for this reason, almost technical if it had been raised immediately upon its occurrence. In the case before us the ignorant preemptors had never paid a cent. On the contrary, they had received pay for what they ignorantly did as common laborers, or little better. Stinson had patented land directly in violation of law by false and fraudulent affidavits, none the less false and fraudulent, so far as he was concerned, though the parties purporting to make them had done so ignorantly. He had obtained these lands for purely speculative purposes. He held it, costing him but a trifle, until it had come to be worth a large amount of money, when the fraud was discovered. The records were complete. The files were perfect. The witnesses, who

had meanwhile become intelligent, were living and some of them appeared in court to expose and make plain the fraud, and Stinson himself, still owning the land, did not and could not deny it in its most essential features. There is nothing similar between the two cases of *The People* v. *Clark* and *United States* v. *Stinson* except that a grant or conveyance was sought to be canceled in each.

The case of *Mayor of Hull* v. *Horner* (Cowper's Rep., 110) was also cited below. There one hundred years had elapsed, and, though he refused to hold that one hundred years was a positive bar because there was no statute of limitations against the Crown, yet he properly held that, as the revolution had occurred, and the Government had changed, and everybody was dead who had any connection with the inception of the claim or right in the parties through whom the defendant held, the grant could not be disturbed. No one can dispute such doctrine or its wisdom, but it simply does not apply to this case. There is no claim of right of a previous grantee of the United States through whom Stinson holds. It is a grievous error, constantly made by counsel for the defendants, that they assume that everybody is dead in connection with this case.

They also cited the case of *Clark* v. *Boorman* (18 Wall., 493), in which they say Judge Miller states the rule of repose in vigorous language, which they quote. We beg leave to quote, for the convenience of the

court, paragraphs 4 and 6 of the syllabi of that case, and ask a comparison with the facts in this case:

> 4. Where a party in interest in his lifetime had notice of all the facts which constitute the ground of fraud alleged in the bill, and for eight years that he lived after the cause of action accrued to him, with notice of his rights and of the whole transaction, brought no suit nor set up any claim, his heirs are not entitled to the benefit of this exemption from the bar of the statute on the ground of recent discovery of fraud.
>
> 6. The general doctrine of courts of equity concerning lapse of time, laches, and stale claims will protect the executors of a trustee sued after his death for matters growing out of the trust which occurred forty years before suit was brought, which were known to the ancestor under whom the plaintiffs claim for over twenty years before his death, and where the suit is brought by those heirs fourteen years after *his* death, and two years after the death of the trustee, and where no person connected with the transactions complained of remains alive.

The rule of repose for the benefit of society and the intelligent administration of justice, most humanly and wisely invoked under such circumstances as obtained in that case, can never be read to protect a living fraud and a living defrauder caught with the results of his fraud squarely in his possession. The repose of society and the intelligent administration of justice at the hands of a court of equity put forth as strong a claim for the overturning of a fraud and the righting of a wrong as

it does for a cessation of litigation at the proper time and under proper circumstances.

Still more unhappily cited than the case last examined is that of *The United States* v. *Moore* (12 How., 222). There a party had purchased land before the United States came into the possession of it from an officer of the Crown who had not the authority to receive the purchase money or to convey title. By the regulations connected with such purchase the purchase was bound to build mounds and levees and to clear and ditch the front of his land to the depth of 2 arpents such land being along the Mississippi River, and this must be done within three years from the date of their purchase, otherwise the land would revert to the King. There was no attempt to fulfill these conditions, and the alleged purchaser asserted no right from 1797 to 1835, a period of thirty-eight years, whereupon the court held that it was presumed that he had surrendered his attempted purchase and had his money refunded. The language of the court under such circumstances, eminently proper, simply has no application to this case.

The celebrated case of *The United States* v. *Arredondo* (6 Pet., 746), was also cited. The court there refused to overturn an ancient grant, fully protected by the treaty of 1819, by which we purchased Florida from Spain. We do not deny the doctrine quoted to be expressly and particularly applicable to the case quoted by counsel. No startling innovation upon the ordinary rules or settled principles of equity jurispru-

dence is invoked by counsel for the United States in this case.

Counsel below quoted from the decision of Mr. Justice Field in the case of *United States* v. *Flint* (4 Sawyer, 58). We subscribe most heartily and earnestly to the whole of the first paragraph and as much of the second as is applicable to the facts under consideration. We claim that, with all the facility in our power, the truth was ascertained when the fraud was first discovered and has been made the basis of the Government's action in court; that there has been no unreasonable lapse of time; no change in the condition of the parties; no shifting of the property barring a relief without injury to third parties who have any rights whatever. In that case the United States sought to open a decree after it had stood for eighteen years. After the party who would be considered to be in the same place as Stinson here had died, third parties had acquired his interest and made valuable and extensive improvements, and the court properly held that to attempt to open the decree after such unnecessary delay and intervention of innocent third parties was against public policy.

In *Maxwell* v. *Kennedy* (8 How., 221), a case between private parties, it was held that the lapse of forty-six years was a bar to relief in equity, although the creditor supposed his debtor to be insolvent and not worth pursuing, where it appeared that for a considerable part of the time the debtor was in a condition to pay and the creditor might, by reasonable

diligence, have discovered it and recovered the money by a suit at law. As before seen, less than two years elapsed from the time of the discovery of the fraud in our case and the commencement of suit, and no time was lost by the Government officials in making the necessary investigation to enable the suit to be intelligently brought. The failure to use reasonable diligence is always discountenanced in law and in equity. With its vast domain, it can not be said that the Government of the United States failed in diligence as the creditor in that case did, because it would have been necessary to have gone all over the patents issued by the Government throughout its vast domain and to have examined the facts and circumstances connected with the issuing of each one in order to have this case on a parallel with the one cited by counsel. There the creditor knew his debtor and had full knowledge of his claim. Instead of watching him closely—in other words, using due diligence—he simply let him go, when for a considerable portion of the time, by an action at law, he might have recovered his debt. Under such circumstances he invoked the aid of a court of equity. No such knowledge can be imputed to the officers of the Government in this case. The cases are utterly unlike in every respect, except the mere lapse of time between the commission of the fraud and its discovery, which, in our case, was many years less than in that.

The case of *Brown* v. *The County of Buena Vista* (95 U. S., 160) contains merely the expression of a

common and general doctrine. It holds that each particular case is to be adjudged upon its own merits as to laches. If, in the exercise of a reasonable discretion, the court is satisfied that there is laches, it will recognize that defense, otherwise not.

The defendants suggested below that twenty years is the ordinary limit which will be observed by a court of equity as indicating laches. The first case cited is that of *Elmendorf* v. *Taylor* (10 Wheat., 173), a case between private parties, in which the Government was in nowise involved; in which a living party, with full knowledge at all times, had waited twenty-one years before attempting to rid himself of an adverse title. The case is so entirely at variance with the facts in this case, and the holding so unimportant as a guide, it is hardly necessary to give it attention.

The case of *McKnight* v. *Taylor* (1 How., 168) is a matter of accounting. The complaining party, after a lapse of twenty years, saw fit to ask for an accounting, which should have been asked in due season. Certainly twenty years in such a case would be a long time for a court to consider laches.

The case of *Sullivan* v. *Portland Rwy. Co.* (94 U. S., 811) discloses a subject-matter of railroad stock, preferred stock, bonds, mortgages, trustees, stockholders, etc.; in fact, a genuine railroad mix-up. The only light that could possibly be extracted from the case to aid the court in this case is that the court held that there was laches.

Godden v. *Kimmell*, in 99 U. S., 201, was a bill to have satisfied an account against a deceased creditor

where fourteen years had elapsed and nothing had been done, the complainant sleeping upon his rights until all parties were deceased, but, like the others, is of no possible weight or importance as a guide in this case.

Quoting from the case of *The United States* v. *Beebe* (127 U. S., 338):

> The principle that the United States is not bound by any statute of limitations, nor barred by any laches of its officers, however gross, in a suit brought by it as a sovereign government to enforce a public right or to assert a public interest is established past all controversy or doubt.

It is true that in this case, which was one where the Government had loaned its name and authority to enforce rights of private individuals, the Supreme Court held in favor of the defense of laches, but was careful not to do so until it had made the distinction between suits to enforce public rights of its own from suits brought in its name for the benefit of private individuals.

In the case of *The United States* v. *Nash., Chatt. and St. L. Ry. Co.* (118 U. S., 120), which was an action brought in the United States circuit court for the middle district of Tennessee upon coupons owned and held by the United States, where the State statute of limitations was pleaded, it was held that such statutes did not apply, and Mr. Justice Gray made use of the following strong language (p. 125):

> It is settled beyond doubt or controversy upon the foundation of a principle of public

> policy, applicable to all governments alike, which forbids that the public interests should be prejudiced by the negligence of the officers or agents to whose care they are confined, and that the United States, asserting rights vested in them as a sovereign government, was not bound by any statute of limitations unless Congress has clearly manifested its intention that they should be so bound.

In the case of *The United States* v. *The Dalles Military Road Co. et al.* (140 U. S., 599), which came up from the circuit court for Oregon, it is held that the claims of the United States can not be treated as stale claims, nor can the defenses of stale claims and laches be set up against them. That was a suit brought under an act of Congress to provide for proceedings for forfeiture of a grant of lands to the State of Oregon for certain public purposes. One of the defendants in the case set up the defense of laches. In reply to it, Mr. Justice Blatchford says, on page 632:

> An assertion that a claim of the United States is a stale claim is an assertion that Congress deliberately directed suit to be brought upon a stale claim. If laches be a good defense, it must be admitted that Congress directed a suit to be brought which would be defeated by showing prior delays by Congress. Besides, the defenses of stale claim and laches can not be set up against the Government. (Citing a large number of cases from the United States Supreme Court.)

The case of the *San Pedro and Canyon del Agua Co.* v. *The United States* (146 U. S., 120) was an appeal

from the supreme court of New Mexico. This was a case of a Spanish land grant. The third paragraph of the syllabus reads as follows:

> When the Government has a direct pecuniary interest in the subject-matter of the litigation, the defense of stale claim and laches can not be set up as a bar.

In that case Mr. Justice Brewer, on page 135, says:

> The United States has, therefore, a pecuniary interest in maintaining this action, that it may recover possession of these mines and secure to itself the revenue naturally derivable therefrom.
>
> This last matter is also a sufficient answer to the second point made by the appellant, and that is that the prosecution of this suit is barred by laches, for it is well settled that when the Government has a direct pecuniary interest in the subject-matter of the litigation the defenses of stale claim and laches can not be set up as a bar.

The case of *The United States* v. *Insley* (130 U. S., 263) is a most instructive one, showing how far the doctrine of laches, as against the Government, has been excluded by the Supreme Court. Thirteen years after a mortgage had been foreclosed it was held that the United States had a right to redeem from the foreclosure decree.

It was there held by the circuit court for the district of Kansas, from which the case came, that the United States, in such a case, came into court on a level with any private litigant and that the case did not involve any question of governmental right or duty, and,

therefore, the ordinary doctrine of laches in equity should be enforced. In reversing that decision, Mr. Justice Blatchford, delivering the opinion, said:

> In the present case the United States holds title to the property in question as it holds all property, for public purposes and not for private purposes. So holding the title and the right of possession under their deed, it holds in the same manner and for public purposes the incidental right of redemption. In this view the doctrine often laid down and again enforced in *United States* v. *Nashville Railway Co.* applies to this case.

Then, after quoting from the Nashville Railway case and citing a long line of Supreme Court decisions, the learned justice proceeds to say:

> This doctrine is applicable with equal force not only to the question of a statute of limitations in a suit at law, but also to the question of laches in a suit in equity. The principle that the United States are not bound by any statute of limitations, nor barred by any laches of their officers, however gross, in a suit brought by them as a sovereign Government to enforce a public right or assert a public interest is established past all controversy or doubt.
>
> It was suggested in the decision of the court below, as a ground for applying to the United States the doctrine of laches, that the Government was not made a party to the foreclosure suit because it could not have been made such party except at its own will, and that it would be a hardship to the other parties to this suit to

> allow the Government to lie by for so many years and then come into a court of equity to assert the rights sought to be maintained in this suit. It is a sufficient answer to this suit to say that the principle we have announced has long been understood to be the rule applicable to the Government, and that it rests with Congress, and not with the courts, to modify or change the rule.

As early as 1832, in the case of *Lindsey* v. *Miller* (6 Pet., 666), in a land controversy, the statute of limitations was sought to be raised against the Government. Mr. Justice McLean used the following language (p. 672):

> It is a well-settled principle that the statute of limitations does not run against a State. If a contrary rule were sanctioned, it would only be necessary for the intruders upon the public land to maintain their possessions until the statute of limitations should run, and then they would be invested with a title against the Government and all persons claiming under it. In this way the public domain would soon be appropriated by adventurers. Indeed, it would be utterly impracticable, by the use of any power within the reach of Congress, to prevent this result. It is only necessary, therefore, to state the case in order to show the wisdom and propriety of the rule that the statute never operates against the Government.

The case of the *United States* v. *The Southern Colorado Coal and Town Co.* (18 Fed., 273), the circuit court of the United States for the district of Colorado, de-

cided in 1883, in many important features, is identical with the case at bar. The opinion is clear, elaborate, and convincing. In that case the names of fictitious persons were used to effect entries as agricultural land of mineral land, notably coal lands near Trinidad. Conveyances were then made, purporting to be made from those straw men, to third parties, who claimed to be bona fide purchasers for value and thus avoid any possible criminal charge. A letter was written from a law office in Trinidad to the Commissioner of the General Land Office, calling his attention to the location of the lands, asserting that they were coal lands, not agricultural, and charging gigantic frauds upon the Government in obtaining them and giving the manner of the fraud. This letter was in evidence in the case, and as many years had elapsed from the time when the letter was written and this suit was commenced, the defense of laches was interposed on the strength of it. The learned judge, in deciding the case for the United States, used the following language:

> The writer's purpose, which was most laudable, seems to have been to induce the Land Department to institute an investigation. It is more than doubtful whether this letter can be regarded as sufficient notice to the United States of the existence of the particular frauds now in question, even assuming that a volunteered communication from a private citizen to a bureau officer could, in any case, be held to charge the Government with notice of its contents. Waiving, however, the consideration of this question, I am constrained to hold that

laches can not be imputed to the Government. It is true, as a general proposition, that when the Government becomes a party to a suit in its own courts it stands upon the same footing with individuals, and must submit to the law as it is administered between man and man. But this general rule has its limitations, and one of them is that neither the defense of the statute of limitations nor that of laches can be pleaded against the United States. "The general principle is that laches is not imputable to the Government; and the maxim is founded, not on the ground of extraordinary prerogative, but upon a great public policy. The Government can transact its business only through its agents, and its fiscal operations are so various and its agencies so numerous and scattered that the utmost vigilance would not save the public from the most serious losses if the doctrine of laches can be applied to its transactions."

In the case last quoted from, the strongest possible charges of fraud were made, the manner pointed out, the very lands embraced in the suit were named by governmental townships, and yet the doctrine that laches will not be applied was enforced and the best of reasons given.

A different kind of a case is that of *The United States* v. *The City of Alexandria* (19 Fed., 609). There a bill for a specific performance was filed on behalf of the United States against the city of Alexandria to require the delivery of 3,500 shares in the Chesapeake and Ohio Canal, which should have been delivered in

March, 1837, a bill having been filed in 1882, after a period of forty-five years. Judge Hughes, of Virginia, quoting a long list of cases, in a most able and instructive opinion, refused to entertain the doctrine of laches, and held for the United States.

In the case of *The United States* v. *Bee* (54 Fed., 112), the circuit court of appeals for the ninth circuit refused to approve of the defense, though a claim on a bond of a United States consul was twelve years old and the principal in the bond was dead, that the sureties were thereby relieved as against the United States. although they would have been at the suit of any private plaintiff, and in this case Judge Gilbert cites a large number of authorities, saying:

> Neither does the negligence of the Treasury Department release the sureties. * * * If the obligee in the bond were any other than the Government, this defense might avail in behalf of the sureties, but the neglect of the United States officials does not excuse Foster's wrong in the first instance, in drawing for more money than was due him, or his subsequent failure to refund the same. All the property of the United States is held in trust for the people, and it is now well settled upon grounds of public policy that the public interests shall not be prejudiced by the neglect of the officers or agents to whose care they are confided.

This case was as late as 1893.

In the case of *The Willamette Valley and C. Wagon Road Co.* (54 Fed., 807, Judge Gilbert, in his opinion, on page 810, said:

> So far as laches is concerned, the decision of the Supreme Court in this case (and other cases cited) must be regarded as finally settling the doctrine that laches or staleness of claim can not be set up as a defense in a suit in equity brought by the United States to assert rights vested in them as a sovereign Government when Congress has clearly manifested its intention otherwise.

It will thus be seen that the Supreme Court of the United States has in the most clear and convincing language possible set at rest forever the defense of laches against the United States and enunciated the doctrine that its Government and people can not be held responsible for the delay, negligence, or fraud of its officers, and it is clearly seen that in various parts of the Union circuit courts of appeal and circuit courts have uniformly and unfailingly applied this doctrine in the cases arising before them as one not only decided and settled, but settled upon sound principle. And this has been done in cases where the hardship was apparently so much greater than in the case at bar as to seem to place the application of the doctrine to this case beyond the shadow of doubt.

Even under the rules governing private litigants, we submit that the evidence fails to show a state of facts calling clearly for the application of the doctrine of laches.

Knowledge of the frauds charged in the complaint was first brought home to the Government by a report of its special agent, Webster Eaton, in May, 1885. (See pp. 480–481 of record.)

The facts were at once communicated to the Department of Justice, which alone had authority to deal with the matter (see letter of Acting Secretary of the Interior to Attorney-General, p. 481 of record), and an action was promptly begun to annul the patents.

At that time the lands were still held by James Stinson, the party charged with perpetrating the fraud, and they were and still are in a state of nature. Not a dollar has ever been expended upon the lands in the way of improvement, and though they have largely increased in value, it is by virtue of the "unearned increment" upon which he has no claim, moral or equitable. Moreover, it will be found, by reference to the testimony of James Bardon, a witness for the defense (pp. 273–274), that the greatest increase accrued subsequent to the commencement of the original action.

It may be claimed, on the part of appellees, that certain contests, begun in an early day, and the correspondence relating thereto between Col. Hiram Hayes and the land department charged the Government with knowledge of these frauds.

A mere glance at this evidence will show that such is not the case. The notices were published in a local newspaper of Superior. There is no proof that any Government official ever saw them. The chances are that none ever did; and if he had, he would have learned nothing from them, as the grounds of contest are not stated.

The only fraud specifically mentioned in the letters of Colonel Hayes was the alleged previous entry by cer-

tain of the preemptors of Government lands in Minnesota (see p. 478), and that was met by the reply of the Commissioner that such lands were subject to cash entry, and therefore did not bar the purchasers from preemption (p. 479).

The same letter informed Colonel Hayes that the patents for the lands in question had already been issued, and he testifies, that upon learning that fact he dropped the matter, and never attempted to pursue it further (p. 375).

There is no other circumstance in the case appealing specially to the court for the application of this doctrine of laches. It is true John Johnson, the active agent of Stinson in these transactions, is dead, but his death occurred within two or three years after the alleged frauds, and long before discovery thereof, and the same is true of other deaths occurring among the preemptors.

Moreover, as we have already shown, *there is no substantial dispute as to what actually took place*, but only as to the conclusion to be drawn from the facts, namely, as to whether or not the entries were made honestly and in good faith and for the benefit of the entrymen as *bone fide* settlers, or fraudulently and in the interest, with the connivance, or to the knowledge of Stinson.

Attention is called to the fact that *every living preemptor of the band of 1854* has been called as a witness, to wit: Lorenz Johnson, Peter Norell, and John Johnson, 2d, or John Lonquist, together with another member of the same party, Peter M. Peterson, who did not

preempt any land, but assisted his companions in the work done upon their claims, *and all gave substantially the same account of the expedition* as our preceding résumé of their evidence will show.

Other witnesses, Stuntz, Carlton, Burbank, Gouge, Gustave Johnson, a brother of John Johnson, 1st, and Gibson, active participants in the transactions or having personal knowledge thereof at the time, and still living, have given their evidence respecting the same, all pointing inevitably to the fraudulent character of these preemptions and to Stinson as the prime mover in the scheme of fraud.

And to crown all, this testimony of preemptors and others is supplemented and corroborated, in almost every material particular, by unimpeachable documentary evidence.

Opposed to all this mass of evidence stands alone the mere denial of Stinson that there was a previous agreement between himself and the preemptors. He does not deny the *probative facts*. He attempts no *explanation* of them. His evidence as a whole is evasive, shifty, and conflicting.

With reference to the 1855 preemptions, the five entrymen are all living, but two only were sworn. One, Andrew Wallmark, was shown to have become mentally as well as physically infirm. Sufficient appears to show that he would probably, but for this, have been a witness for the Government, having previously given it his affidavit. (See pp. 352, 353.) As to the two remaining preemptors of that year,

Stinson has not seen fit to avail himself of their testimony, but he certainly can not complain that he was deprived of it by complainants' laches.

As to other witnesses, aside from Gouge and Burbank, the adverse claimants to these preemptions who might have given valuable evidence for the Government have either died or, after being driven out by a mysterious fire (p. 363), have disappeared, so that in respect to loss of evidence the United States alone seems to have suffered by lapse of time

In this state of the facts the language of the court of errors and appeals of New Jersey seems peculiarly applicable:

> The material facts of the case are clearly established by documentary evidence or by the testimony of living witnesses. No serious doubt rests upon any part of the case. The controversy is not seriously embarrassed by the claims of third parties or by conflicting interests. Under such circumstances lapse of time constitutes no ground for refusing relief in equity. (*Obert* v. *Obert*, 12 N. J. Eq., 423, 429.)

STINSON'S CLAIM OF BONA FIDE PURCHASE.

The doctrine laid down in the case of *Hawley* v. *Diller* (178 U. S., 476) fully disposes of this question, since Stinson purchased before patent, upon which point there can be no possibility of dispute.

Nevertheless, we call attention to the fact that the testimony of Stuntz, that of nearly every witness among the entrymen, as well as the testimony of Burbank and others who were about on that occasion,

established by a great preponderance that Stinson perfectly well knew that the law as to settlement, occupation, and cultivation had not been complied with in any particular, and, of course, if our claim of fraud is true he knew best of anybody that the parties were entering the lands solely in his interest, were under his pay and were manipulated, deceived, and defrauded by him.

STINSON'S TESTIMONY.

As hereinbefore stated, through lack of care in drafting the complaint, Stinson's answer on oath was not waived. Taking advantage of this fact, he filed a sworn answer which is claimed by counsel to have the full effect of evidence in the case, and they are undoubtedly correct under the rule of equity procedure. This required that Stinson should be called by the Government for cross-examination upon matters contained in the answer and pertinent to the issues. A careful study of the case satisfies counsel for appellant that no thorough understanding or appreciation of the gross and outrageous fraud then perpetrated and on the trial sought to be defended and explained away can be had without a reading of such cross-examination found at pages 149–193 of the record. Such a reading will disclose a man of 70 or thereabouts, but still clear, discriminating, and well preserved in all his mental faculties, yet to the last degree shifty, evasive, recalcitrant, and in almost every particular acting in bad faith. And we submit that such a reading will give to a court experienced in such matters at

least as unfavorable an impression of the defendant's case as any that can be obtained through any other testimony in the record. Before a commissioner, having no power to enforce obedience such as that possessed by a court, Stinson, when pushed to a point where he must openly deny or confess, was shielded by his counsel in several instances and absolutely refused to answer pertinent questions. We respectfully request that his testimony be perused in its entirety.

For the reasons above given and others which counsel may consider in oral argument, we respectfully submit that a clear and undoubted case, by a heavy preponderance of testimony and evidence, was made by the complainant, and that the decrees of the lower courts should be reversed and this land, so unjustly obtained, restored to its rightful owner.

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